

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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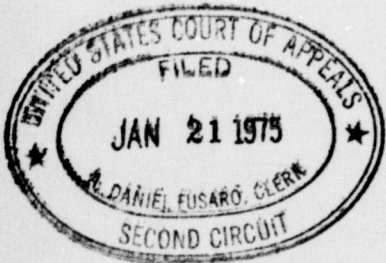
United States Court of Appeals

For the Second Circuit.

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HOWARD M. WERNER, :
 :
Plaintiff - Appellant :
 :
against :
 :
UNITED STATES OF AMERICA :
 :
Defendant - Appellee :
 :
Plaintiff on Cross- :
Complaint :

On Appeal from the U. S. District Court
for the District of Connecticut

APPENDIX - PART B - TRANSCRIPT



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Note: This transcript was edited to delete extraneous material only. In all cases, deletions are indicated by three dots, as follows: ... or by three stars if a full paragraph was deleted. I hereby certify that none of the deletions relate to evidentiary matter.

JOSEPH NEIMAN
Plaintiff's Attorney



TRANSCRIPT OF TESTIMONY

(T.3) ... THE COURT: Is the United States the only third-party plaintiff here? MR. DINAN: Yes, your Honor.

THE COURT: How long will this take?

MR. DINAN: The government anticipates a day and a half to two days of trial, your Honor.

(T.4) THE COURT: ... Are there any facts in dispute here?

MR. DINAN: Yes, your Honor. I think that the plaintiff and the third-party defendants will contest most of the facts insofar as their individual liabilities are concerned.

* * *

THE COURT: ... All right. Are we ready now to proceed?

MR. WERNER: Yes, your Honor.

THE COURT: Let's get under way.

MR. WERNER: I call Mr. Lepore.

(T.5) FRANCIS LEPORE, called as a witness being first duly sworn, was examined, and testified as follows:

THE CLERK: Will you state your name and address for the Court, please?

THE WITNESS: Francis J. Lepore, Wethersfield, Connecticut.

THE COURT: What is your business or occupation?

THE WITNESS: I am a Group Manager for the Internal Revenue Service.

THE COURT: ... You may be seated, Mr. Lepore.

DIRECT EXAMINATION BY MR. WERNER:

Q. Mr. Lepore, were you in the same capacity as you've just stated back in 1968, 1967? A. Yes.

Q. And did you come in contact with a matter known as Hugo's Continental Restaurant, Inc. at that time? A. Yes.

Q. And could you tell us how that came about?

A. One of my Revenue officers was investigating the (T.6) assessment of a 100 per cent penalty. In this vein, as his supervisor, I was involved in the case - only as his supervisor. He made the recommendation for the assessments.

Q. Well, in what point of time did you enter this case when a determination had been made by the original investigator or did you join in the determination in this case?

A. As I recall it, I did not join in the determination. The recommendation was made and I concurred with it.

Q. Well, by whom was this recommendation made?

A. By Revenue Officer Sargis.

Q. I'm attempting to determine a procedure how these things come about, Mr. Lepore; so that is the purpose of my questions at this point. Did this case first come to Mr. Sargis for investigation, is that how it was initiated?

A. I don't remember how he got it. Obviously he was working on the case. I really don't remember whether he had Hugo's or whether this was assigned to him for the penalty assessment investigation. I don't remember.

Q. Do you have a file on this case, Mr. Lepore?

A. I have a file upstairs. It's the same as the file that the U.S. Attorney has; the same one.

Q. Well, do you have that file and would that refresh your recollection?

(T.7) A. It may not show. That file would not show how we got it, no.

Q. Well, Mr. Lepore, it's not a question of "may". Could it?

A. Possibly. I don't think so, though.

Q. Well, have you reviewed that file --

THE COURT: Let's take a look at it and see if it does. Is it here? Let's not conduct discovery at this point, Counselor.

MR. WERNER: I'm not attempting to, your Honor. I just assumed the file were here.

THE COURT: Well, it looks to me as if you are wrong. Do you know what happened? Have you tried to find out by deposition or otherwise, up to now?

MR. WERNER: We have had depositions, your Honor, but not with the agents from Internal Revenue.

MR. DINAN: May I approach the witness, your Honor? THE COURT: Yes.
(Witness handed a document.)

A. This file does not show how Mr. Sargis got the case.

BY MR. WERNER:

Q. Well, he was investigating unpaid withholding Social (T.8) Security under the --

A. As a Revenue officer, yes.

Q. .. under the name of Hugo's Continental, Inc.?

THE COURT: Social Security? What is that?

MR. WERNER: I'm sorry, your Honor. Unpaid withholding taxes.

THE COURT: All right.

MR. WERNER: I didn't mean Social Security. Unpaid withholding taxes from Hugo's Continental, Inc., which was a Connecticut corporation.

Q. (By Mr. Werner) Now, at what stage did it come to you, Mr. Lepore?

A. After he made the recommendation.

Q. What recommendation?

A. For the assessment of a 100 per cent penalty.

Q. Against whom?

A. Against four parties: Mr. Werner, Mr. Alesi, Mr. Smith, as I read the file, and Mr. Bua.

Q. And when was that determination made, Mr. Lepore?

A. I'd have to look at the file again. I don't remember.

THE COURT: You don't have Sargis' file here, right? THE WITNESS: No.

THE COURT: Is it in the building?

THE WITNESS: No, sir, I would think that file (T.9) is destroyed now; the file .. the corporation, itself, for that file.

THE COURT: Why would it be destroyed now?

THE WITNESS: Well, it's over three years.

THE COURT: It is still an active file.

THE WITNESS: Well, the 100 per cent penalty file is its active file, sir.

THE COURT: All right.

BY MR. WERNER:

Q. Well, Mr. Lepore, the 100 per cent penalty is based upon a tax that would have been assessed against the corporation to begin with, is it not?

A. Yes, sir.

Q. Then that would be an active file, wouldn't it? A. No, sir.

Q. Well, if that original tax --

THE COURT: Well, it isn't. You know. He says it's gone.

MR. WERNER: Well, if your Honor please, what I'm trying to establish is that at this point there was efforts by the Internal Revenue to collect a tax. Not just to determine who may be liable, but to collect a tax. THE COURT: All right.

MR. WERNER: And I think it's essential that (T.10) we know just what went on with regard to the original determination that a tax was due.

MR. DINAN: Your Honor, I will object on the grounds that that's irrelevant and immaterial. The fact of the assessment is the takeoff point, now why the recommendation was made.

MR. WERNER: I claim it, your Honor.

THE COURT: Just a minute, counselor. MR. WERNER: Yes.

THE COURT: Do I understand that the amount of tax assessed is disputed?

MR. WERNER: Yes, Your Honor.

THE COURT: I don't see anything alleging that the tax is improperly computed.

MR. WERNER: Well, your Honor, my complaint states that I am not liable for any tax in this matter.

THE COURT: I will sustain the objection.

* * *

BY MR. WERNER:

Q. Now, isn't it the procedure of the Internal Revenue, Mr. Lepore, that you join in the determination of the assessment?

MR. DINAN: If it please the Court, I will again object. (T.11) I believe he is trespassing on the Court's order. You have ruled that this is immaterial and irrelevant.

MR. WERNER: I will reword it:

Q. Isn't it true that you as supervisor or in charge of Mr. Sargis had to be involved in the determination of the penalty tax?

A. My responsibility is to concur or not to concur. If I don't agree with him, I send it back for more information, or whatever.

Q. All right. And what action did you take in this case?

MR. DINAN: Your Honor, I'll object. It's irrelevant. THE COURT: He agreed with the recommendation. He has testified to that three times.

Q. (By Mr. Werner) You agreed with the recommendation?

A. Yes, sir.

Q. Would you tell us the facts which led you to agree with this recommendation?

A. They are numerous and all in the file, and I can't recall them step by step.

Q. Well, if you had the files could you refresh your recollection?

A. Well, basically, what it amounted to was that the (T.12) recommendation was that the parties as assessed for whatever periods, were responsible in one way or another for the taxes not being paid to the government.

Q. Well, with regard to myself, Mr. Lepore, in what way was I responsible?

A. The investigation by the Revenue officer and statements from the other parties gave the -- what was the question again?

THE COURT: What was the basis for finding that Mr. Werner was responsible? Is that who we're talking about?

MR. WERNER: Yes, sir.

A. All the information we had pointed out that you were controlling the financial resources of the company. You were in the background handling all the determinations.

Q. All right, Mr. Lepore. Was I an officer of the corporation?

A. No, sir, that we could find out. Q. Pardon? A. No, sir, that we could find out. It was not on record.

Q. Well, how do you ordinarily determine whether a man is an officer? ...

(T.13) A. By the secretary of state's information.

Q. Well, did you check the secretary of state?

A. Yes, sir.

MR. DINAN: Your Honor, I object on the grounds that this is irrelevant and immaterial. The amount of the assessment in this case is not in dispute. The fact is not in dispute. The government has filed a counterclaim against Mr. Werner. Mr. Werner has not responded to the counterclaim under the Federal Rules. He, therefore, admits the contents of the counterclaim. The counterclaim states the data of the assessment and the amount of the assessment. Now I state, your Honor, that there is no necessity to investigate this man as to why that determination was made. It is irrelevant.

MR. WERNER: If your Honor please, on January 16th, '69, Mr. Lepore sent out a letter to me -- let me withdraw that, your Honor. The assessment was on June 22nd, 1970 and that assessment stated ... as an employee or officer of the corporation.

THE COURT: You say there is a third-party complaint against Mr. Werner?

MR. DINAN: No, your Honor.

(T.14) There is a counterclaim in the government's Answer against Mr. Werner.

THE COURT: In the Answer, yes. .. All right. I see it.

MR. DINAN: I submit therefore, your Honor, that the assessment is admitted.

MR. NEIMAN: May I be heard at this time, your Honor?

THE COURT: Who do you represent?

MR. NEIMAN: I represent Mr. Robert Smith and Mr. Frank Alesi, your Honor. They were brought into this case by the Internal Revenue Service, so that they are defendants on a third-party complaint. So, in a sense, I am allied with Mr. Werner in the trial of this matter.

THE COURT: Well?

MR. NEIMAN: Well, your Honor, I can't speak for Mr. Werner, of course, but our pleadings, I submit, while admitting the fact of the assessment, do not admit that it was a proper assessment. And rather than my raising the same questions that Mr. Werner raises, I would ask that the Court determine them now. It is our feeling that the assessment was made on the basis of evidence which is not (T.15) valid. It was made administratively. It was not a judicial determination of liability. ...

THE COURT: ... There is a presumption that this is valid and made on adequate evidence. Now, if you've got evidence to put on, let's go ahead with it.

MR. NEIMAN: Yes, your Honor. But we do not concede it is an irrebutable presumption, your Honor.

THE COURT: No. If you've got some evidence, go ahead.

MR. NEIMAN: Of course, at the proper time. But I think right now the question is on what basis did the government make this assessment in the first place.

MR. WERNER: That's the point I'm attempting to go at, your Honor.

THE COURT: Well, the witness has already answered. He said you were the financial power behind this business.

MR. WERNER: Yes, your Honor. But I would like to delve into how he determined I was the financial power.

(T.16) THE COURT: This was done by the Agent, not by Mr. Lepore.

MR. WERNER: But Mr. Lepore agreed that he concurred with the Agent's assessment after an investigation.

THE COURT: Yes, he did.

MR. WERNER: And I would like to know on what facts, if I may continue, sir.

THE COURT: Do you remember?

THE WITNESS: Well, I'll try.

THE COURT: Go ahead.

BY MR. WERNER:

Q. What were those facts, Mr. Lepore?

MR. DINAN: I have a standing objection to this line of inquiry, your Honor.

THE COURT: Well, if he has some recollection. .

A. Well, as I recollect, there were no records pointing to you, as such, as an employee or an officer, true. But the law does not specifically state you must be --

THE COURT: No, no. Just say what you found, never mind arguing about it. What did you find? What led you to say he was the power behind the throne?

THE WITNESS: Information received from the other three parties all pointed to Mr. Werner as (T.17) being the power behind the finances.

THE COURT: All right. Now, what kind of information?

THE WITNESS: Their testimony, mostly.

THE COURT: Well, what was it?

THE WITNESS: At every turn their testimony was Mr. Werner told them what to do and how to do it. And it's all in the file. If I can read the file, I can read something right from the file.

THE COURT: Did you have that file before you a minute ago? THE WITNESS: Yes, sir.

THE COURT: All right. Let him see the file again.
(Document handed to the witness.)

THE WITNESS: It's quite lengthy, your Honor.

THE COURT: Just hit some high spots. We are not going to go into this in its entirety - through you, anyway.

THE WITNESS: "No wages were shown for Mr. Werner, but Smith and Bua stated he ran up a \$3100 charge for food. Werner then paid Bua the \$3100 (T.18) with a check, had Bua endorse the check back to Mr. Werner."

BY MR. WERNER:

Q. Excuse me, Mr. Lepore. After reading that, did you ever find this check?

A. No, sir.

Q. Did you ever make any efforts to find it, Mr. Lepore?

A. I'd have to go through the file, sir...

A. I don't have that file here. Well, I don't have his note on that here.

Q. This is Mr. Sargis' note?

A. Yes, this is all Mr. Sargis.

Q. Well, in his note does he indicate whether or not there was any supporting evidence to that statement?

A. "From what Mr. Bua says, Werner, Kerin and Kaplan were acting as the silent partners. They could get 51 per cent or controlling interest in the corporation within two years for \$1000. As was mentioned earlier, \$15,000 in accounts receivable were discounted by Werner for approximately \$11,000 in cash. This \$11,000 was apparently one of the loans signed by Bua, Werner, Kerin, Kaplan, which note along with others was paid with corporate funds."

"\$11,000 cash from this transaction found its way (T.19) into Smith's account and was disposed by Smith to whomever Werner directed, according to Smith."

And all through the file there's references to this kind of thing.

THE COURT: All right.

Q. (By Mr. Werner) In that file is there any corroborative evidence to these statements, Mr. Lepore?

MR. DINAN: Objection, your Honor. It's irrelevant and immaterial.

THE COURT: Sustained.

Q. (By Mr. Werner) Well, these were just Mr. Sargis' statements to you?

A. Yes, sir.

Q. Now, you've read this file before you concurred in his judgment as far as assessing this penalty tax? A. Yes, sir.

Q. And did you ask for any supporting evidence on this, Mr. Lepore?

A. Evidently records were very scarce.

Q. Well, why were they scarce, Mr. Lepore? Did anybody ask for them?

A. Yes, sir.

Q. Did you? A. I imagine they did. Now, you know, I'm going back four or five years.

(T.20) Q. It's more than that, Mr. Lepore. But let me again ask you, did you ask for any supporting evidence to these statements?

MR. DINAN: Objection, your Honor.

THE COURT: Sustained.

* * *

MR. WERNER: Pardon?

THE COURT: I sustained the objection.

MR. WERNER: Yes, your Honor.

BY MR. WERNER:

Q. Mr. Lepore, you came to an independent determination as far as the assessment of this penalty, did you not?

A. No, sir.

Q. Well, wasn't that required before this assessment could be made against these parties, that the supervisor must agree with this.

MR. DINAN: Objection again, your Honor.

(T.21) Irrelevant. THE COURT: Sustained.

MR. WERNER: ... You are sustaining the objections.

THE COURT: ... The point is that there is a presumption that the

government is right. Now, if you want to produce evidence, go ahead and produce it, to show that they're wrong. Now, he has already indicated there is some basis for making the determination which the Commissioner made.

* * *

BY MR. WERNER:

Q. Now, Mr. Lepore, is there anything in that file that indicates that at a certain point of time that I specifically instructed Mr. Smith and Mr. Bua to go to the Internal Revenue and pay the taxes?

MR. DINAN: Objection, your Honor. Hearsay. Mr. Werner is the only one who would know.

MR. WERNER: That's not true, your Honor. I think that there are statements in that file (T.22) ... made by other parties to the Internal Revenue to that effect, and I would want to know if this came into the consideration of Mr. Lepore or the Commissioner.

* * *

THE COURT: Well, I don't know how that helps you. It only shows that you were running the show if you were instructing people to use the money of the corporation to pay the taxes.

MR. WERNER: If your Honor please, if I might. On this assessment, as I understand it, it has to be a willful refusal to pay the taxes. Now, if there's evidence indicating that there was an attempt to pay the taxes, I think that would refute the willfulness of the taxes, your Honor.

THE COURT: Well, do you recall anything like that in the file?

THE WITNESS: No first-hand information. There is a reference in the file that Mr. Werner stated that he sent somebody up.

MR. WERNER: That I what?

THE WITNESS: Sent somebody up to IRS. I think that's the reference in the file. But we have no first-hand knowledge of it.

(T.23) BY MR. WERNER:

Q. But it's the same kind of information on which you made the other determination, Mr. Lepore; all of that was second-hand knowledge or second-hand information, was it not?

A. The information we received from Smith and the other parties involved was first-hand knowledge to them.

Q. Well, wasn't it from Smith and Bua that you were told that they were instructed to go to the Internal Revenue to pay taxes?

A. At your direction, yes sir.

Q. I understand that, Mr. Lepore.

A. I think that was the inference.

Q. But you got that information in the same manner that you got other information?

MR. DINAN: Objection, your Honor. It's immaterial and irrelevant.

THE COURT: Sustained.

Q. (By Mr. Werner) You did get statements from Mr. Bua and Mr. Smith that at my request they had gone down to the Internal Revenue to pay taxes, is that correct?

A. I believe that's what the file says.

Q. I mean it's a file you reviewed and you had that knowledge in your mind.

THE COURT: The file says that Mr. Werner said (T.24) that, is that right?

THE WITNESS: I'll have to review that again.

THE COURT: All right. (Pause)

THE WITNESS: No, I can't seem to find it at the moment. It's in here somewhere.

Q. (By Mr. Werner) All right, Mr. Lepore, let me go on to the next point. Did you have any discussions with Mr. Smith or Mr. Bua or Mr. Alesi, or anybody else, in this matter?

A. I vaguely recall talking to Mr. Bua. What I said or when it was, I have no idea.

THE COURT: Mr. Who? THE WITNESS: Bua.

THE COURT: Bua. Is that Kago? THE WITNESS: Yes, sir.

THE COURT: All right.

Q. (By Mr. Werner) Well, do you have any notations on any discussions you might have had with Mr. Bua?

MR. DINAN: Objection, your Honor.

THE COURT: Sustained.

* * *

(T.25) Q. All right. Now, you wrote me a letter on December 16th, is that correct, advising me of this assessment? Are you aware of that?

A. The dates I'm not aware of.

MR. WERNER: Mr. Dinan, do you want to look at this?

MR. NEIMAN: No objection.

MR. WERNER: May this be marked as a plaintiff's exhibit?

THE COURT: May be marked as an exhibit. What is the document?

MR. WERNER: It's a letter to me, your Honor, from Mr. Lepore that indicated for the first time, to my knowledge, that there was an assessment.

THE COURT: Notice of proposed assessment, or what? MR. WERNER: Yes, sir. THE COURT: All right.

MR. WERNER: It's an agreement to an assessment. It's a letter containing an agreement to an assessment.

THE CLERK: Plaintiff's Exhibit 1, your Honor.

(T.26) BY MR. WERNER:

Q. Do you remember that letter, Mr. Lepore? A. Yes, sir.

Q. And together with that letter was a Form 275, which is an agreement to the assessment and collection of a 100 per cent penalty? A. Yes, sir.

Q. And does it also indicate on that Form 275--it says, "Name and address of responsible officer or employee"?

MR. DINAN: So stipulated, your Honor. It's an official document.

MR. WERNER: Q. All right. Now, is there any evidence at all in your file or in review of the file, or any facts that you came in contact that I was an officer or employee?

MR. DINAN: Objection, your Honor. The government will stipulate that Mr. Werner was not an officer or employee of the corporation.

THE COURT: Sustained.

MR. WERNER: He stipulated to that, your Honor.

THE COURT: That's right. You were not an officer or employee.

Q. (By Mr. Werner) All right, Mr. Lepore. So in your judgment I was responsible on another basis?

(T.27) MR. DINAN: Objection. Irrelevant and immaterial.

THE COURT: Sustained.

MR. WERNER: May I say something on that, your Honor? My complaint states that this was improperly assessed against me.

THE COURT: I understand what your complaint says. Now, do you want to show something? We have a presumption and we have some evidence to support a finding against you. Now you have an opportunity to present a case.

MR. WERNER: Yes, your Honor, and I'm trying --

THE COURT: Well, go ahead and present it. If you've got some evidence, come forward with it.

MR. WERNER: I'm attempting to do that, your Honor.

THE COURT: Well, you are not attempting to do it by simply rehashing what the government has or whether that's sufficient. The Court regards it as sufficient because the law regards it as sufficient. Now, if you want to meet it with something to oppose it, come forward with the evidence to oppose it.

MR. WERNER: Well, your Honor --

(T.28) THE COURT: Are you prepared to do that?

MR. WERNER: Yes, your Honor.

THE COURT: Well, then let's get on with it.

MR. WERNER: Well, I'm trying to get from this witness that he had evidence in his possession that would determine that I was not responsible for this tax, your Honor, and that it was just not taken into consideration.

THE COURT: I'm sorry, but that judgment has already been made by the Commissioner of Internal Revenue, that you are responsible on the basis of whatever he's got. That judgment is not here for review. If you want to produce evidence to show that there is no basis at all, that's another thing. But to just challenge whether his judgment was correct on conflicting evidence is not permissible in this manner. Now, have you got some evidence you want to put on? The government doesn't have to come in and start its case from the beginning to satisfy you or any other taxpayer.

MR. WERNER: I appreciate that.

* * *

(T.29) THE COURT: Please appreciate it so that you don't waste everybody's time.

MR. WERNER: Well, your Honor, Mr. Sargis is not here. I was advised just this morning that he's in another part of the country and I was hoping to have him here, as we had agreed to prior to this trial.

THE COURT: The government has evidence on which to hold you responsible and he has indicated what that evidence is; that you were the power behind the throne and told these people what to do. Now, if you want to put on evidence to knock out the basis of their determination, go ahead and do it.

MR. WERNER: I'm foreclosed from getting it through this witness, your Honor?

THE COURT: That's right.

MR. WERNER: That's all, your Honor.

CROSS-EXAMINATION BY MR. NEIMAN:

Q. Mr. Lepore, you are familiar, are you not, with the mechanical steps taken in making an assessment? A. Yes, sir.

(T.30) Q. All right. Now, with respect to the corporation alone, sir, would you tell us what steps are taken in a situation such as this to make the assessment of the taxes? I am not talking about penalties now; merely the taxes, to start with.

A. Taxpayers' returns are filed and they're assessed.

Q. On the basis of the taxpayer's return? And was that done in this case for all the quarters in question, if you know, sir?

A. Yes, sir. Returns were filed.

Q. Were they filed by the taxpayer, sir; if you know.

A. I do not know.

Q. All right. So they may have been made up by an Internal Revenue agent?

A. I do not even know that at this point.

Q. Very well. So some may have been and some may not also; that's a possibility, is that correct, sir?

A. At this point, yes sir.

Q. All right. Now, once that assessment is made against the taxpaying corporation what steps are taken to assess this 100 per cent penalty?

MR. DINAN: Objection, your Honor. I believe the Court's pre-trial statement has noted that discovery has been completed in this case and this is in the nature of general discovery.

(T.31) MR. NEIMAN: I'm not asking that to find out, your Honor. I'm asking so that we may have a foundation for our defense here.

THE COURT: You mean you want to know the mechanics after a return is filed, what's the next step toward an assessment?

MR. NEIMAN: Well, your Honor, I want to know what was done in this case, of course, with respect to making these 100 per cent penalty assessments.

THE COURT: Well, the 100 per cent penalty assessment is just for the amount of tax due, is it not?

MR. NEIMAN: Yes, your Honor, of course.

THE COURT: So there is no penalty involved at all.

MR. NEIMAN: It merely calls it a penalty assessment in the law, your Honor, that's all.

THE COURT: It is a penalty assessment when the assessment is directed to a person responsible for the payment.

MR. NEIMAN: Yes, your Honor.

THE COURT: It is not a penalty assessment when it is directed to the corporation, is it?

(T.32) MR. NEIMAN: No.

THE COURT: Then what are you talking about?

MR. NEIMAN: I am talking now about the assessment made against individuals, which is a penalty assessment.

THE COURT: All right. When do you do that? When do you assess the individual? After the corporation doesn't pay?

THE WITNESS: Yes, sir. When we feel we can no longer collect it from the corporation.

THE COURT: All right.

BY MR. NEIMAN:

Q. And on what basis now did you make the penalty assessment against the individuals involved in this case? You've also testified with respect to Mr. Werner.

MR. DINAN: Objection, your Honor.

Q. May we have your basis for the other two defendants?

MR. DINAN: Objection, your Honor. Counsel is examining out of turn. This witness is here as a witness for the plaintiff in the plaintiff's case. Counsel is now attempting to put his case in and he's a third-party defendant. The defendant has not even cross-examined this witness yet.

(T.33) THE COURT: Mr. Lepore, in the same way you make a determination as to who is responsible for the payment, right?

THE WITNESS: Yes, your Honor.

THE COURT: And then you make the penalty assessment against that person responsible?

THE WITNESS: Yes, your Honor.

THE COURT: All right. That's the way it is done and you know it.

MR. NEIMAN: Yes, sir. Q. (By Mr. Neiman) How was it done in this case, sir? Was it on the basis of the Agent's reports to you?

A. There has to be a basis and the basis normally would be the Revenue officer's investigation and report.

Q. Yes, sir. And can you tell us now whether that was the basis in this particular case - whether the Revenue agent reported to you that there should be this 100 per cent penalty against the individuals who are parties in this action?

MR. DINAN: So stipulated, your Honor.

MR. NEIMAN: Thank you. Then I have no further questions.

THE COURT: All right.

MR. DINAN: No questions, your Honor.

THE COURT: Step down, Mr. Lepore.

(T.34) (Witness excused.)

* * *

(T.35) WILLIAM J. KERIN, called as a witness, being first duly sworn, was examined, and testified as follows: THE CLERK: Will you state your full name and address for the record, please.

THE WITNESS: William J. Kerin, 60 Stoner Drive, West Hartford, Connecticut.

DIRECT EXAMINATION BY MR. WERNER:

* * *

Q. Would you state the business relationship that existed between you and me as of January, 1967.

A. It's like we had a mutual investments in real estate and you were my lawyer under a fee; retainer.

Q. And this situation had existed since when, if you recall?

A. Either '65 or '66. We first started on Farmington Avenue.

Q. The first time --

A. 921, we started building.

Q. We started building a building on Farmington Avenue in West Hartford?

A. Right.

(T.36) Q. Mr. Kerin, would you please tell us your recollection of knowing Mr. Hugo Bua?

A. Well, my wife went to his teaching school. She thought he was great. He taught Italian cooking. ... And that restaurant closed up. He went to another one, was a waiter or maitre d', I don't know which - near Lord and Taylor's. And then he went across the street.

* * *

Q. Would you give us a point of reference or point of time when these things were going on?

A. Oh, boy. I can only guess '65. I'm not sure. But it's about that time.

Q. To the best of your recollection? A. Yes.

Q. And when next did you see this Mr. Bua?

A. Across the street from the building. I moved in there, I believe, in May of '66 and he was working across the street in Camelot. And he came over to see me. He had a chance to buy in 25 per cent. There were, I think, four people--don't hold me to percentages, but it was 25 or 25 per cent. And he come over to me and I wasn't too interested. He came in in September--pardon me.

(T.37) Your Honor, so I don't go to jail, I had my head split open and I confuse months and dates.

THE COURT: Well, sometime in early --

A. He borrowed \$400 to pay his telephone bill at home.

Q. (By Mr. Werner) From whom, Mr. Kerin? A. From me.

Q. Yes, sir?

A. And in April - I just found this out yesterday - he got a thousand dollars from me in April. I don't remember why. Never paid him back, either one. But, hey, he had a very personable appearance and my wife thought he was a great teacher.

THE COURT: All right. Let's get on with it. Let's get down to what we are interested in.

Q. (By Mr. Werner) Now, at a certain point in time Mr. Bua discussed with you an ability to purchase the entire corporation that was running the restaurant across the street.

A. Over a long period of time, yes. Several visits.

Q. And culminating sometime in about February or March of 1967?

A. I would think so, yes.

Q. Did he indicate to you that he was able to purchase the entire stock of the corporation that was running that restaurant? A. Yes.

(T.38) Q. And what went on from there, Mr. Kerin? ... What happened at that point?

A. Well, it seemed that--I thought he was very capable. He had a chance to do it on his own. He had gotten fired from the first place. I thought it was their fault and not his. And finally I discussed with you and with Mr. Kaplan the approach. And I was interested in, I kind of dragged you two by the hand and I advanced money to him, and if it took over, if it was successful, then I had the option to buy in. And it just went downhill.

Q. Let's just speak a little more of the option. That option gave you the right to buy 51 per cent of the stock for a thousand dollars within two years of the time it was executed, is that right?

A. That's right.

Q. Now, Mr. Bua then proceeded to purchase the stock of the corporation?

A. I wasn't there, but I believe yes. In fact, I think--well I know there was somebody they were missing that had a piece. But we got--I read this yesterday. The three people that had 25 per cent each. He got those. Where the other one went, God only knows. ...

(T.39) Q. And Mr. Bua was represented at all times by his own lawyer, Mr. Kerin, during these proceedings? A. Yes.

Q. Now, he proceeded to operate the corporation; that is, a restaurant?

A. Right.

Q. Now, can you recall what kind of financial backing or help that either you or I or Mr. Kaplan gave to Mr. Bua or the corporation?

A. Well, we went - I hope this is right - we went to the bank --

Q. To the best of your recollection, Mr. Kerin.

A. -- and we signed the notes at the bank. In fact, it seemed to me there was the Charter Oak and CBT were involved and one wanted out. But I know it seemed to me it was like \$33,000 we eventually had passed in and given away, if you will.

THE COURT: Who is "we"?

THE WITNESS: Mr. Kaplan, Mr. Kerin and Mr. Werner. That's Werner. Those are the two gentlemen I owned some property with, including the building we just started at that time.

(T.40) Q. (By Mr. Werner) Now we don't own the building that the restaurant is located in? A. No.

Q. I didn't want that confused. So over a period of time we co-signed notes for the corporation ... to obtain funds to continue its business, is that correct?

A. That's right.

Q. All right. Now, in June or July did Mr. Bua request additional monies because he needed them for the operation of his business? Do you recall?

A. No, I don't know.

Q. Well, an incident came about in August of 1967 where you insisted upon obtaining a mortgage on Mr. Bua's home, is that correct? A. \$6900 -- ... I took a mortgage on his house which was in his wife's name in Newington. And I think I was in the third position at that point. And it seems to me \$6900 ...

(T.41) Q. (By Mr. Werner) Well, was there a note that was signed--

THE COURT: Whose money was this, this \$6900? Was that the three of you again?

THE WITNESS: Your Honor, I hope so. I looked last night and I don't know. The only two checks I found were the \$400 and the \$1000 one in his name.

MR. WERNER: I can clarify that, your Honor, if I may.

Q. Do you recollect a note that was signed by Hugo's Continental Restaurant that we endorsed in the back "Guaranteed payment"?

A. Yes. There's a couple. There was one at --

Q. Well, if I show you one perhaps it will --

A. I'm sure it will. I'm sorry, your Honor, but I had trouble with my head. Ironically, my mind is working well, but what I think and what I say doesn't match. It's awful. It's old age accelerating.

THE COURT: It's not noticeable yet.

THE WITNESS: That's good.

THE COURT: Where is Hugo these days?

(T.42) THE WITNESS: The last time I heard he had opened a restaurant in Cheshire and that closed up ...

MR. WERNER: Your Honor, may I show Mr. Kerin this, just to refresh his recollection?

THE COURT: Of course.

MR. WERNER: If somebody wants it in evidence, it's all right.

THE COURT: Go right ahead.

(Witness handed a document.)

A. Well, sure, that's my signature.

Q. (By Mr. Werner) All right. Now, was that about the time that you got that mortgage, Mr. Kerin?

A. I would think so, yes. ...

Q. Could you describe our feelings - that is, yours, mine and Mr. Kaplan's - as we discussed what was going on in Hugo's Continental at that time?

A. At that time I think we had--well, at least I had lost the "amore"; that's love. I thought it was a great idea of a good restaurant in the center of the town I live in, and it just had gone downhill and downhill.

(T.43) I lost a lot of the enthusiasm I had for it. But we were in. We were just hoping now to work our way out and get our money back.

Q. We were on notes at the bank? A. Yes.

Q. Now, did there come a time, Mr. Kerin, subsequent to this August occurrence where I came to you relating a request for additional monies for Mr. Bus on behalf of the corporation? A. Yes.

Q. Could you describe those circumstances, please?

A. Very, very clearly. In fact, your Honor, it's why I'm here today, I think. They were insolvent, to say the least. But to make matters worse, they owed Uncle Sam I think you call it withholding. And Hugo came over and he came into my office and literally was crying in my office. The door was shut. And he told me that if he didn't take care of Uncle Sam they would put him out of the country.

Q. Deport him? A. Deport him. And he had four children, and I think his wife was born in this country and he was upset that they would throw him out of the country for nonpayment.

(T.44) And this was the only reason that I agreed to go along and give him more money to pay Uncle Sam. And I had had it right up to here with giving him any more dough. And we were going to take accounts receivable for the corporation in exchange for it, was around--it seems around--well, it was \$11,000. I'm not sure of this. That was the money they owed Uncle Sam. And Uncle Sam must have told him something, must have asked him for it, because he came in and he was panicked in my office. This is Hugo.

And I've got the list. As a matter of fact, I had to smile. I was looking at it last night. There was \$1220 from Attorney Werner on the receivables. I had forgotten that position. But we took those and there was \$15,000 on face, but some of it had been paid and we never knew, and it was worth less than the money that we had agreed. And I think it went to Uncle Sam - was supposed to. Now, that was very definite, that it was going to go to be paid. And Howard and I discussed it after Hugo. I couldn't have the guy thrown out no matter. It was a chance to keep him in the country and keep him working. He never got thrown out, anyhow.

Q. Was it the first time you discovered that he was not a citizen, Mr. Kerin? A. Oh, no. I knew...

(T.45) Q. I mean for the reason for the deportation was that he was not a citizen?

A. Right, right. I always knew he was born in Italy and had come over and gotten married here.

Q. Right. Well, anyway, that was the reason that the accounts receivables were purchased because that's the only asset that the corporation had for whatever that was worth? A. That's right.

Q. And do you remember any discussions on my part with a Mr. Smith relative to making sure that Mr. Bus straightened out his problems with the Internal Revenue Service?

A. I remember several conversations we had on that. And I remember prior to this we had agreed that Mr. Smith seemed to have a better business ability than Hugo did. And he took over the handling of the finances..

Q. But you do remember specific discussions relative to the payment of the taxes due the Internal Revenue?

A. Absolutely. That was the only reason they got the money.

THE COURT: Who did they get the money from? From you?

THE WITNESS: No; KKW.

(T.46) Well, we borrowed -- yes, we borrowed money from -- anyhow,

KKW gave them the \$11,000.

THE COURT: Who is KKW?

THE WITNESS: Kerin, Kaplan and Werner; or Kaplan, Kerin and Werner.

THE COURT: And you took the accounts receivable?

THE WITNESS: That's right. And we gave them to our CPA to handle the collection. Solomon, I think is his name. Well, anyhow, our CPA was in the same building...

MR. WERNER: May this be marked as Plaintiff's Exhibit 2, your Honor.

THE CLERK: Plaintiff's Exhibit 2, your Honor.

THE COURT: All right.

(Plaintiff's Exhibit 2: Accounts receivable listing, with transfer attached)

BY MR. WERNER:

Q. Mr. Kerin, do you recall this document that is now Plaintiff's Exhibit 2?

A. Yes. This is what - \$1223.75 - he was down there for, your Honor.

THE COURT: On what? THE WITNESS: On the accounts receivable.

(T.47) THE COURT: This is the list of accounts receivable?

THE WITNESS: List of accounts receivable and the fact that I advanced him -- oh, God, it shows 11,000 and 5,000. It's supposed to be \$11,500. I guess Hugo wrote it and I didn't even bother checking it. It's supposed to be eleven thousand five and there's one extra zero in it.

Q. (By Mr. Werner) It was \$11,500?

A. Right. I remembered that before.

Q. Now, Mr. Kaplan is a stockholder of Underwriter Service Agents?

A. Not any more.

Q. Well, he was at that time? A. That's right.

Q. Is there also an accounts receivable that we purchased back under Underwriters Service Agency? A. \$405.32.

Q. Were any of your bills on that that we purchased back, Mr. Kerin?

A. My secretary is pretty good at paying bills, unfortunately.

(T.48) CROSS-EXAMINATION

BY MR. DINAN:

Q. Do you have a specific recollection of paying the \$11,500 to Mr. Bua? Do you recall the circumstances of that payment? A. No, I do not. You mean do I remember handing it to him? Q. Yes. A. No, I don't.

Q. Do you have a specific recollection of Mr. Bua, himself, asking you for that money?

A. I remember Hugo sitting in my office and crying he was going to be put out of the country.

THE COURT: We're talking about the money.

(T.49) A. Do I remember specifically giving him the money? No, I do not.

Q. (By Mr. Dinan) Do you remember Mr. Bua specifically asking you for that money? A. Oh, yes.

Q. Approximately what date, do you have any idea?

A. No, I don't. I'm sorry.

Q. Does Plaintiff's Exhibit No. 2 refresh your recollection insofar as the date is concerned? Let me show you that.

A. I'm sorry. If I said yes I'd be lying. It's November. It's about the right time of year. I can't get any closer than that. I'm sorry.

Q. All right...In what form was that payment made, Mr. Kerin?

A. I would say check.

Q. Are you sure?

A. No. But I would bet 99 out of 100 that it had to be a check. It wouldn't be cash, that's for sure.

Q. Do you recall specifically giving that check to Mr. Bua or do you recall giving it to someone else for Mr. Bua?

A. Well, I work by myself and I'm very busy and I would guess Howard Werner, as an attorney I had confidence in him, I would think - and I'm not sure of this - I would (T.50) hand it to him to give it to him because he's the one that wanted to go along. I didn't even want the tax. I figured I've had enough.

Q. So it's possible you gave it to Mr. Werner to give to Mr. Bua?

A. That's possible. I'm not sure. There's no way I can be sure now.

Q. On Direct Examination you've testified, Mr. Kerin, that yesterday you read this and yesterday you read that. Would you tell me what you read to prepare for your testimony here?

A. Oh, I have a very, very skimpy file. I don't have this in it (indicating).

Q. Is it your own file, Mr. Kerin?

A. Oh, yes, yes.

Q. Did you discuss your testimony with Mr. Werner before appearing here today?

A. We've been discussing this for four years. You mean did I tell him what I was going to say? No, I wouldn't say specifically I did.

Q. Did you specifically discuss the incident of allegedly paying to Mr. Bua \$11,500?

A. Oh, I've done that, sir, for three or four years, at least. Whenever we got --

(T.51) Q. And in particular yesterday and today before appearing here for your testimony?

A. Not today. I didn't have time. But yesterday, yes.

Q. All right. Now, did you and Mr. Werner together remember whether or not you gave that money to Mr. Bua or whether you transferred it to Mr. Bua through Mr. Werner?

A. Never discussed it. I'm sorry.

Q. You don't know that? After the money was, in fact, paid to Mr. Bua, do you recall whether it was deposited in any bank accounts of the Hugo Continental Restaurant?

A. Hearsay. Now I'll be glad to tell you what I was told happened.

Q. You may do that.

A. All right. Mr. Werner -- now I'm a little surer -- he brought the money over.

THE COURT: To where?

THE WITNESS: To across the street to the restaurant, to Mr. Smith. (By Mr. Dinan) How do you know that?

A. Because he told me that day he was going to bring it over. He told me there was a discussion and where they went the next day.

Q. Now, what did he tell you he did the next day?

A. I say the next day, or very close. I think it was the next day. (T.52) He sent Hugo and Smith to Uncle Sam to straighten out the money they owed.

Q. Did he tell you that he sent them down with the check?

A. I just assumed. I know he sent them down. I assume he sent them down with the check.

Q. What else did Mr. Werner tell you? What happened to that check?

A. I only found -- well, I may have heard it before, unfortunately I have a lag -- but he pointed something out to me yesterday which --

Q. Mr. Werner? A. Yes.

Q. When you say "he" -- A. I'm sorry. Mr. Werner.

Q. This is when you were discussing your testimony for today?

A. Testimony, the whole thing we were discussing.

Q. Fine.

A. He didn't suggest what I should say.

Q. Well, why don't you; you tell us what he said.

A. All right. I'm sorry. I lost my-train of thought.

Q. You were saying that Mr. Werner was telling you about sending Mr. Smith and Mr. Bua to the Internal Revenue Service. (T.53)

A. Right. And yesterday he told me that prior to the time me giving them the money Smith had written checks for other bills.

Q. Mr. Werner told you this yesterday?

A. Yes. Well, now I may have heard it before. Unfortunately, I was unconscious for sixteen days; I got a lapse.

Q. Just to the best of your recollection will be sufficient, Mr. Ke. A. I'm sorry.

Q. Well, then when he found out that Mr. Smith had written checks prior to his bringing the \$11,500 check to where -- to the Internal Revenue Service?

A. No. Across the street.

Q. Then what happened?

A. He wasn't involved in -- the one thing he did, now you didn't ask me this but I think it's important to him and to me and to Uncle Sam: At no time did he want to be involved. In fact this, your Honor, I'm sure. That when we picked --

Q. Excuse me just a minute. What question are you answering now, Mr. Kerin?

A. The fact that we brought the money over and gave it to them, for Smith and Hugo to come down to Uncle Sam and straighten it out. It wasn't done.

(T.54) Q. That was my question. Now, what did Mr. Werner then tell you when he found out that it wasn't done, that it had not been taken to the Internal Revenue?

A. I did not remember that until yesterday. I'm sorry. But I presume we discussed it. My secretary knew. And thank God, she's helped me a lot. But the money was delivered with the intention of him going down, and it was for Hugo because Hugo was going to be thrown out, deported, and that's why the money went in and he was supposed to come down to Uncle Sam...Bob Smith was running, we thought, to straighten it out. And he is the one that wrote the other checks which he had no right to do. If I had known, I would have never got into this and given more money after the money was gone.

Q. You say Mr. Smith had no right to write checks, is that correct?

A. No, because we were giving that money to pay Uncle Sam so Hugo wouldn't get thrown out of the country.

Q. Then could you determine who would sign checks for Hugo's Continental Restaurant?

A. I went in the office one day to look at it. I was upstairs. (T.55) I never looked at a checkbook, I never wanted to get involved. I was sorry I got involved a year before.

Q. Well, then you had previously testified on Direct Examination that you, Mr. Kaplan and Mr. Werner all invested in Hugo's Continental Restaurant, right? A. Right.

Q. That was a joint venture?

A. Yes. Well, we don't have a partnership. Don't ask me why. But that was common funds that we invested and if they wanted they could get stock. We have an agreement that any time anything comes up we have to talk with the other two.

Q. One-third of the money invested by KKW was Mr. Werner's, is that correct? A. Yes.

Q. And you previously testified, I believe, that that total investment was about \$33,000?

A. That figure stands out in my mind. To rebuild, I don't know how we'd do it.

Q. So the, in fact, Mr. Werner had \$11,000 invested in Hugo's Continental Restaurant? A. But he would not get involved in it.

Q. Well, that was not the question.
I move that that answer be stricken.

A. Why?

(T.56) Q. Because he had one-third of \$33,000 and, therefore, he had \$11,000 invested in the company.

A. Pardon me. Why would you want to strike it? I don't understand this.

MR. DINAN: Your Honor, would you please ask the witness to respond to the question?

THE COURT: It can stand. Let's go on.

BY MR. DINAN:

Q. Now, Mr. Kerin, how frequently did you visit Hugo's Continental Restaurant?

A. The last eight months, three or four time.

Q. For what purpose?

A. Just to go over -- I never went just to visit, I always went over to eat. And I took people there when he first opened up. Adn Hugo is a real showman in preparing. But the food wasn't good and, you know-

Q. Well, did you go over there to transact business pertaining to Hugo's Continental Restaurant? A. Oh, no.

Q. You never did that?

A. I used to go over there to eat. If that's transacting business, that's his business, yes.

Q. All right. Now, insofar as your \$33,00 investment, that is the investment of KKW --

(T.57) A. Now I hope that's a right figure. I'm not sure.

Q. Let's assume that it is. A. All right.

Q. Did Mr. Werner then protect your interests by monitoring the investment and the spending of those funds by Hugo?

MR. WERNER: I'll object to that question, your Honor.

THE COURT: Sustained.

Q. (By Mr. Dinan) As your attorney did you send Mr. Werner over to Hugo's Continental Restaurant to monitor the financial affairs of that restaurant? A. No.

Q. Did you do anything through Mr. Werner to protect your investment in Hugo's Continental Restaurant?

A. I got a \$6900 mortgage on Hugo's wife's house. Was it August? I think August.

Q. But that wasn't to protect your investment, was it? Wasn't that for a specific \$6,900 loan?

A. Well, I had no investment other than loans at this point.

THE COURT: But this was a separate item of \$6,900?

THE WITNESS: I think that's right. That was (T.58) the amount of the mortgage, your Honor. I knew there was no cushion in there at all.

Q. (By Mr. Dinan) In any event, you and Mr. Werner never went over to Hugo's Continental together to monitor the financial affairs of that company, is that correct?

A. Absolutely that's correct.

Q. And you don't know what Mr. Werner did when he went to Hugo's, since you weren't there?

A. Oh, yes. At first he used to -- well, he used to ridicule me for the decision and then he was trying to make -- when I felt sorry for Hugo I prevailed upon him and Mr. Kaplan to go along and take at least protection, we thought, in the receivables.

Q. But my question was you didn't go over with Mr. Werner to Hugo's Continental to help Hugo conduct his financial affairs, is that correct?

A. No.

Q. You didn't. You never did?

A. I say never. I was in the office once, upstairs. Whether I looked at a check, I don't know. I wouldn't be fair to say yes or no. I really don't

know. If it was, it wasn't very important. No decision-making thing.
 Q. And so far as what Mr. Werner did as your attorney at Hugo's, you only know that from hearsay from what Mr. Werner told you, is that correct? You were never there?

(T.59) A. I'd say that's fair.

Q. The answer to that question is yes? A. Yes.

MR. DINAN: No further questions, your Honor.

THE COURT: All right. ...

CROSS-EXAMINATION BY MR. NEIMAN:

Q. Sir, you mentioned the name Smith a few times and you pointed to a gentleman sitting in the room. Is he here now? A. He is.

MR. NEIMAN: Would you stand up, please. Q. Is that the gentleman you're speaking about? A. I believe so.

Q. ... And do you know whether or not his name is Robert Smith?

A. No, I don't know that.

Q. Do you know whether or not he's a defendant in this lawsuit? A. From hearing your conversation with him, I have to say yes. But if that's knowing, yes. ...

(T.60) Q. Do you know whether or not this Robert Smith had any investment in this restaurant?

A. Time, yes. I'm sure he had time invested and he had a promise of buying--not buying; he had a promise of a percentage interest if it was successful. Now, whether it was 20 or 25 per cent, that stands out in my mind. I don't know why.

Q. Do you know whether or not he had any money of his own invested in this business? A. No, I don't.

Q. But you do know from your own knowledge that he had put some time in, is that correct? A. Yes.

Q. Would you give us some indication of how much time?

A. I can't. I'm sorry.

A. (cont.) At the tail end it seemed to me he was in entertainment. And he struck me as being a nice chap. And Attorney Werner didn't want to get involved in there and this man seemed like--It seemed to me he was over at the office. We had a discussion. This may not be true, but I think it is. Either my office or maybe it was over in the bar across the street at Hugo's. ... And whether it was him or the other musician Alesi--Alesi, I think, wanted to bring in New York entertainment. They did for a few weeks. ...

(T.61) Q. Yes, sir. Would that be Mr. Frank Alesi that you're talking about? A. Yes, yes.

Q. All right. And what was Mr. Frank Alesi's connection with this, if you know, sir? A. Gee, I'm sorry.

Q. Was he also an entertainer?

A. I believe so. It seemed that they were together.

Q. And did you see both of them spending some time at the office?

A. I don't know that I saw them in the office. Hugo's sister Terry, or Theresa, was up in the office the day I went up there.

Q. You saw them around the place, is that it? A. Oh, yes.

Q. Now, were either of them hired by you, sir? A. No.

Q. Or by your, say, syndicate or group? Were they hired by your group to do anything at all?

A. Not to my knowledge. This was Hugo's employees; yes, Hugo's. Then they got together with Hugo and Hugo seemed agreeable that they were doing a good job and helping.

Q. So as far as you know, then, they were Hugo's employees? A. Yes.

(T.62) Q. As distinguished, for example, from Mr. Howard Werner's employees? A. Couldn't have been his.

Q. All right. Now, do you have any idea at all of the length of time they were involved, sir? I mean was it weeks or months?

A. Gee. Well, it's at least two months because it seemed to me--don't

hold me to this, but there was around eight weeks that they brought in, think, entertainment from New York and they were expensive...

Q. So that their involvement, so far as you know, was for an eight week period, is that right? A. At least.

Q. Now, about this agreement that you were talking about, sir--

A. Which one?

Q. Where you said about perhaps one of them at least might have a piece of the business under certain circumstances. A. Yes.

Q. Did you ever see that agreement?

A. No. But I think I have my own handwritten notes.

Q. As to what, sir? That is, were you told about the agreement by someone?

(T.63) A. I would think Hugo.

Q. By Hugo?

A. Now I'm not positive. That's my guess. Now this is, God, seven years ago?

Q. Right. But then your only knowledge about this comes from what Mr. Hugo Bua told you, is that correct?

A. No. He was involved too in--I'm almost positive he was in my office, which is right across the street. It was then. And he was very interested in getting into the business as an owner.

Q. Yes, sir?

A. And he seemed to be well qualified.

Q. Yes, sir. The question I mean. Ask you, sir, was your knowledge of this agreement or any contents of this agreement, did it come only from Mr. Bua or was it possible that it came from some other source?

A. Well, may I inject something? When you say--it doesn't--you see, I never believed it had to be in writing until I learned the hard way a couple of years ago. Those two checks I gave Hugo, never got a note for them. I have a mark. This may not have been in writing. But we had an understanding that he would be entitled for the work he was putting in, he would be entitled to own, if I ever exercised it (T.64) I would understand I still couldn't take 51 per cent without him having a percentage. Now how that was broken down, I don't know.

Q. And this was all verbal between you and Hugo, is that correct?

A. Smith was there too. He was there for this discussion. At least once.

Q. All right, good. Then did this take place in a three-party discussion?

THE COURT: Well, this would have to involve KKW?

THE WITNESS: No, it wouldn't, because--

THE COURT: Who was going to give 25 per cent or 75 per cent of the stock?

THE WITNESS: Your Honor, I'm not sure. I think there would be no compunction by putting it in from KKW--you see, I have the option, but KKW would have the option to get in with me if they wanted to. I'm sure they would have if it had been successful.

Q. (By Mr. Neiman) But, sir, just to make a long story short, did you ever see a written agreement on this subject?

A. Gee, no, I don't think so. I don't remember. I'm sorry.

(T.65) Q. So you took part in some discussions which may have led to a written agreement, possibly?

A. That's very possible, yes.

MR. NEIMAN: Thank you. That's all.

* * *

MR. WERNER: If your Honor please, I think I can clarify some of these points. ... I don't think I will take more than five or ten minutes. ...

THE COURT: All right. Let's finish up with him, then.

REDIRECT EXAMINATION BY MR. WERNER:

Q. Mr. Kerin, I'd like to show you a proposed agreement and see if you have any recollection of seeing this.

A. Oh, boy, yes. I have this in green ink, I think. I'm sorry. Yes, I have.

Q. You remember seeing that? A. Yes. ...

(T.66) MR. WERNER: May this be entered, your Honor, as Plaintiff's Exhibit 3? ...

THE COURT: May be marked as a full exhibit.

THE CLERK: Plaintiff's Exhibit 3, your Honor.

(Plaintiff's Exhibit 3: Proposed agreement, marked full exhibit.)

BY MR. WERNER:

Q. Mr. Kerin, I show you Plaintiff's Exhibit 3 and indicate to you the top line. Could you tell us what the date of this purported agreement was, as is stated?

A. December of '67.

Q. All right. Now, do you recollect seeing that, now that I show it to you?

(T.67) A. Yes, ... my secretary typed this.

THE COURT: Okay. It's been answered. Next question.

Q. All right. Does that provide for your option being reduced to less than 51 per cent of that corporation on certain conditions?

THE COURT: I assume that it does. You had an option for 75 per cent?

THE WITNESS: 51 per cent and now there's 40 per cent.

MR. WERNER: Originally it was 51 per cent, your Honor. Mr. Kerin had an option to buy 51 per cent. In December, in order for Mr. Smith to purchase and so forth, he reduced his--

THE WITNESS: To 31 per cent, I guess it was.

MR. WERNER: Well, there is a paragraph there where it indicates.

THE WITNESS: 20 per cent. Transfer 20 per cent of the shares to the corporation. Right. And that was between me.

Q. (By Mr. Werner) Let me refer you to a specific paragraph, Mr. Kerin. Paragraph 8 of this agreement.

A. Yes, it's very specific. ...

(T.68) I agreed that within two years they had the right to get 20 per cent of my stock. And they've got to pay \$400 for 20 per cent.

Q. You? That you would have the right to buy 20 per cent of the corporation for \$400?

A. No. They. They do.

Q. No. Read the paragraph.

A. I beg your pardon. You are right.

Q. In other words, you gave up the right to buy 31 per cent assuming that agreement had been --

A. Right. That's for 20 per cent or \$400. I'm sorry.

MR. WERNER: All right. Thank you. I thought that would clarify that point.

THE COURT: The purpose for that was to leave Smith an opportunity to get some, right?

THE WITNESS: Smith and Alesi.

MR. WERNER: And there was another party and that is the purported agreement, what it says, your Honor.

THE COURT: Anything else of this witness?

MR. WERNER: No, your Honor. I have nothing.

* * *

(T.69) RE-CROSS-EXAMINATION BY MR. DINAN:

Q. Mr. Kerin, I invite your attention to what has been introduced into evidence as Plaintiff's Exhibit 3, the agreement that was to be signed by Mr. Smith. That agreement never was in fact signed, was it, Mr. Kerin?

A. I don't believe so. But I don't know.

Q. Do you recall how this agreement came about? Who suggested, first, that this agreement be drawn?

A. To say specific--I know--I would think it was Bob Smith, that he wanted for him to spend time, he wanted a piece of the action, if you'll pardon the expression. And I really have no right to say this, but that just seems to me where it emanated.

Q. That seems to be where it emanated?

A. Yes. But I'm not sure. I'm sorry.

Q. You're not sure. Do you know who the law firm of Crosky, Werner, & Tallow represented in December of 1967? That is, do you know whether or not they represented KKW?

A. They would have to. I don't understand the question. But Howard Werner is part of Crosky, Werner & Tallow.

Q. I see. And this agreement was drawn by that law firm?

(T.70) A. I think they drew the ultimate--But it seems to me that there were other attorneys involved. Now, I'm sorry I'm not sure, but this is as I remember vaguely.

Q. Did you discuss with Mr. Werner the terms of that proposed agreement?

A. I can say yes, without even looking at it.

Q. Now, that agreement involved the loan of certain monies to Hugo's Continental Restaurant, is that not correct?

A. If you say so without me looking it over, I'll agree. Should I read it and pick--I don't know what I'm supposed to do.

Q. Will it refresh your recollection as to what occurred at the time that agreement was drawn if you did read it?

A. Probably, yes.

Q. Why don't you take the time to do that.

A. Okay. I'm sorry. (Pause)

Q. Have you read that document, Plaintiff's Exhibit 3, Mr. Kerin?

A. Most of it. I skipped the monthly percentages.

Q. Now, do you recall who caused that agreement to be drawn?

A. I'm ashamed to tell you I can't remember who Mario Bua is.

Q. Well, do you remember who caused that agreement to be drawn?

(T.71) A. Who caused it? There was a lot of negotiation. Some of it was in my office. As far as I'm concerned, I was interested in seeing--

Q. Well, the answer to the question is that some of the negotiations that were the background to that agreement took place in your office, is that correct?

A. Yes. But I don't remember Mario Bua at all. That's what bothers me.

Q. Let's just consider the agreement. We don't have to specifically remember the characters in the agreement.

A. Okay. Yes, please.

Q. Did you discuss with Mr. Werner the contents of this agreement before it was drawn by his law firm? A. Yes.

Q. Now, was there a necessity at that time for the infusion of new funds into Hugo's Continental Restaurant?

A. Gee, I'm sorry, I can't tell you.

Q. You don't know how you arrived at the total of approximately 35 or 45 hundred dollars that was to be invested in Hugo's, according to that agreement?

A. If you want what I'm trying to remember, with no guarantee --

Q. Just to the best of your recollection.

A. All right. We wanted to tie in Smith and Alesi (T.72) because they had a nice stage presence and I thought that Smith was a pretty good businessman for in the office too to help. In fact, it was because we relied on him handling it that I had a little more confidence.

Q. I see. Now, this --

A. And I think it was their idea. You know, Smith's and -- that they wanted, if they were going to do this they wanted some of the ownership or the opportunity to have some ownership.

Q. How soon before this agreement was drawn up would you guess that this meeting took place in your office? This agreement is dated December of 1967. Does that refresh your recollection?

A. No, I'm sorry, it won't.

Q. Well, would it have been six months before or --

A. Oh, no. Oh, no.

Q. Maybe a month before?

A. Now, you know, it's like speeding; are you doing --

Q. Somewhere around there?

A. I would guess maybe two months or three months. I'm sorry. And that's a rotten thing. I'm not sure. I have no idea. It's a short period of time. It's no year.

Q. But in any event the agreement does refresh your recollection to the extent that in 1967 you were active in (T.73) the financial affairs of Hugo's Continental Restaurant, isn't that correct?

A. No. I can tell you flatly, no.

Q. Then this agreement, however, does provide that certain amounts will be invested by these people --

A. Not by me. I've already kissed mine goodbye in there and I took my potential ownership in 51 per cent to 20 per cent. I've forgotten that, frankly, until I saw this.

Q. As a matter of fact, you never did sign that agreement, did you?

A. This one? Q. Yes.

A. No. But the 51 per cent we had--I think that was signed, 51 per cent.

Q. Do you have that agreement that was signed?

A. No. I'm not sure. But I know--I didn't have to have anything signed until a short time ago because I believed people--unfortunately.

Q. But it's your contention, however, that one time you did sign an agreement and reduced your option to purchase 51 per cent?

A. I didn't say that. I said at one time I had a 51 per cent option. Whether it was in writing or not, I'm not sure now.

(T.74) Q. I see.

A. But having seen this, you know--you've got to believe this. As I think about it, I have to thank God for the ability to start rebuilding the facts as they were. I have trouble with it to start. But this I can remember going in. The actual details, no. The percentages I don't bother with. What was fair was fair. This wasn't my livelihood and I never got involved in their books. In fact I left, I stopped eating there, I was so upset.

Q. But you did get involved in the negotiations that led to the drawing of that agreement that's Plaintiff's Exhibit 3?

A. Got involved in?

THE COURT: Let's see a copy of the agreement, please. Is there an extra copy around?

THE WITNESS: Here, your Honor. This is way back on 8 where the 20 per cent is spelled out, sir.

BY THE COURT:

Q. This 20 per cent referred to in the agreement was to come out of shares owned by Bua, right?

A. Right. Yes, your Honor.

Q. It didn't propose to relinquish any part of that which covered your option?

(T.75) A. Yes. I had an option--either written or oral, I can't tell you which--for 51 per cent and that cut it down to 20 per cent.

Q. You had an option for 51 per cent?

A. Right.

Q. Bua himself had 75 per cent?

A. Well, he had a hundred per cent. Some of the stock was missing. It doesn't make sense, but--

Q. In any event, you were not giving up any part of your option rights to get Smith in here?

A. Oh, yes. Pardon me. Yes, your Honor.

Q. How? This provides that the shares would come from Bua. Right?

MR. DINAN: That's correct, your Honor.

MR. WERNER: That's right. Bua owned all the shares at all times. Mr. Kerin originally had the right to buy 51 per cent of what Bua owned, 51 per cent of Bua's ownership in the corporation.

THE COURT: I see.

MR. WERNER: This agreement was to the effect that Mr. Kerin would reduce his right to purchase to 20 per cent of what Mr. Bua originally owned so that the other parties would be able to purchase a percentage as well.

(T.76) THE COURT: Where does it say he reduced his?

MR. WERNER: I believe in Paragraph 8, your Honor.

THE COURT: Paragraph 8?

MR. WERNER: Yes, your Honor.

THE COURT: It has no reference to a previous option or rights under a previous option, does it?

MR. WERNER: Yes, sir. "In consideration of Kerin amending his previous agreement with Bua for the purchase of stock in said corporation Kerin at any time within two years from the date hereof" --

THE COURT: This amending this previous agreement, amending in what respect?

MR. WERNER: Rather than have the right to purchase 51 per cent of Bua's stock... He now had the right to purchase 20 per cent within two years.

(T.77) THE COURT: All right.

BY THE COURT:

Q. And they are giving Smith 20 per cent?

A. And Alesi 15 and Mario Bua 15. So that's 50 per cent for them and 20 per cent; it would leave Hugo with 30 per cent, if it had been successful. But you see Mario Bua must be his brother, his uncle or his father. I don't remember that at all. ...

Q. All right. And yours was held for KKW?

A. Well, in essence, yes. Legally, I suppose no. But I always understood that if ever we make a situation --

Q. Well, I guess legally they would honor the agreement among you gentlemen?

A. Oh, sure. I would think so, sir.

THE COURT: All right.

BY MR. DINAN:

Q. All right, Mr. Kerin. Then do you recall speaking with Mr. Hugo Bua about this agreement prior to its being drafted? A. No, I don't.

Q. Well, who spoke to Mr. Bua, do you know? A. No, I don't.

Q. Would Mr. Werner have discussed this potential agreement with him?

(T.78) A. Him or his attorney. I think Hugo had an attorney and Mr. Werner--you don't talk to people; you have to have an attorney, so talk to their attorney. So to have them talk directly I would think no. But I don't know.

THE COURT: You don't know. THE WITNESS: No, sir.

Q. (By Mr. Dinan) Did you ever present this agreement or were you present when this agreement was presented to Mr. Smith for his signing, his signature?

A. I don't know, sir.

* * *

A. I'm sorry. I tried to do too much for one man and I don't pay attention.

THE COURT: He doesn't know. Come on, let's move along.

Q. Then do you recall having signed any agreement with Mr. Bua that you would not purchase 51 per cent of the stock after this agreement was presented to Mr. Smith?

(T.79) A. No sir, I don't know that.

THE COURT: There was never an amendment then? Your agreement with Bua?

THE WITNESS: I'm not sure that agreement is in writing. ... I just don't know, sir. THE COURT: I see.

MR. DINAN: No further questions, your Honor.

* * *

(Witness excused.)

MR. WERNER: May I proceed?

THE COURT: Call your next witness.

MR. WERNER: Mr. Smith.

(T.80) ROBERT SMITH, called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: Will you state your full name and address for the Court, please.

THE WITNESS: Robert J. Smith, 1157 84th Street, Brooklyn, New York.

* * *

DIRECT EXAMINATION BY MR. WERNER:

Q. Mr. Smith, I'll try to narrow this down to the period of time that I feel through depositions and so forth you had some knowledge in what was going on in Hugo's Continental. It is true that prior to somewhere around October of 1967 your only connection with Hugo's Continental was as a piano player, as an entertainer?

A. Before October? Q. Yes, roughly October. It might have been the latter part of October or beginning -- A. Yes.

Q. But in that area? A. ... Just played piano. Q. Right.

(T.81) A. And I conducted a show band that was in the back room, a larger room.

Q. And that occurred sometime like September or October, that show business?

A. That was somewhere in between, I would say, a period of May and September of that year, that's all I did do.

Q. The point was that your appearance in the restaurant had nothing more to do than your playing the piano or conducting an orchestra up till about October, 1967? A. Yes.

Q. All right. And on various occasions around October I had discussed with you whether you were interested in attempting to get into this business to learn the business, in the hopes of making a success and somehow be a part of the ownership?

A. Well, yes, around that time. Management, learn management and office procedures, buying, and so on, you know.

Q. We all understood at that time--when I say "we"; you, I or whoever was involved--that there were great financial difficulties in that corporation as far as paying its bills to the suppliers and so forth? Around October, Mr. Smith.

A. Not that it was clear to me. It's just that--no, not right then; no. I didn't see it then and I wasn't told about it then.

(T.82) Q. Now, sometime in the latter part of October or so, you agreed to take an active part in the attempt to straighten out the financial condition of the corporation and keep it running, is that correct?

A. Around that time I agreed to work in the office. ... To learn the business.

Q. And also to determine what the financial status, as far as creditors, were concerned of the corporation?

A. Well, I would be there answering the phone and talking to, you know, whoever came in and advising you of what was going on.

Q. Right. You and I had a great deal of problems with suppliers who said look, you owe me so much money and if I don't get paid I'm going to bring a sheriff in and close up the business, and so forth?

A. Well, that was when I started to work in the office, that was one of the things that occurred, yes.

Q. Right. So around the latter part of October, in that area, you participated by going in in about ten o'clock in the morning, staying in the office and answering phone calls from creditors, so on and so forth, making sure deposits were made from the previous night's business, and attempting to get the corporation on a proper business basis?

(T.83) A. Well, I did office work. As far as my putting the business into shape, no, I didn't, you know. I was just learning the business then. That was all.

Q. And part of that learning process was to attempt to convince creditors that if they accepted partial payments that this business could get on its feet and they would be paid their money in time?

A. Well, when, say, these people would call I would take down the general information. At the end of the day, when I would see you, we talked about it. And you would say, well, do this with this and do this with that. And then I would relate the next day. I would call back the meat man, or the grocer, or whoever it was.

Q. You and I attempted to get some organization in the payment of bills of this corporation? A. I would say yes, I guess so.

Q. We were attempting to see that the corporation have a chance to exist because the big season, Christmas, was coming up and hopefully there would be substantial business during that period?

A. Well, that's what you told me, yes.

Q. Didn't you tell me the same thing, Mr. Smith?

A. Well, I didn't really know what business was going to be done during the holidays.

(T.84) Q. I understand. But you've been an entertainer for some years before that. You know that the Christmas season is the biggest season in the restaurant business? A. Yes, right.

Q. So that we were mutually in the hopes that sufficient business would be generated so that these outstanding bills could be paid and the business could continue? A. Yes, you mentioned that to me, yes.

Q. Sure. Now, at one point in time I presented Plaintiff's Exhibit 3 to you after discussions with you and Mr. Bua relative to your future right to purchase stock, assuming the business became successful?

A. Is that this particular here?

THE COURT: Yes. It is up there.

THE WITNESS: May I see it, your Honor?

THE COURT: Sure. Reach over.

THE WITNESS: I just want to see if it's the same one that I saw over there.

A. Oh yes, this is the one, yes.

Q. Now, that agreement called for your loaning to the corporation \$1500, and you weren't prepared to do that?

A. Well, when that was presented to me that was the first time anything like that was even brought up to me. And then as soon as I looked at it I didn't even go past the first page when it said "loan Bua \$1500".

(T.85) No way in the world was I going to loan him any money.

Q. It never occurred to you that you could purchase enough of the stock in writing before this agreement was presented to you?

A. Maybe after the waiting period time, yes, for my apprenticeship time, yes. But to lend him money, no.

Q. No, I understand that, Mr. Smith. All I'm saying is that when you decided to learn the business and for the purpose of learning the business try to straighten out the corporation and if there were a successful corporation you would want the right to buy an ownership interest in the thing?

A. Well, learn the business and if the business continued after my putting in from ten in the morning till two in the morning I felt that, yes, I should have some kind of a compensation for putting in twelve-sixteen hours a day at it.

Q. Right. So that was discussed prior to December, whatever date the agreement. That agreement was dated December blank. So it was sometime before that that --

A. It was an agreement that you brought in, but nobody wanted to have anything to do with it.

Q. That is true. That is true. What I'm saying is that you did want some agreement to purchase a piece of the business if it would be successful sometime in the future for your time and effort?

(T.86) A. Right, yes.

Q. Now, as a matter of fact you had your own attorney draw an agreement for Mr. Bua's signature on behalf of the corporation giving you the right to

purchase stock?

A. Yes. That was an agreement that you--when we sat down with yourself, with Bua and Alesi and myself, and you said well, I think Bob should get this if he's going to do this, and so on. And I related that to my attorney back in the City and she made up the contracts.

Q. It was also your desire, Mr. Smith? A. Oh, yes. Yes, I know.

Q. Of course. And on December 19th, 1967 such an agreement was signed by you and Mr. Bua on behalf of the corporation? A. Yes.

Q. All right. And I had nothing to do with that agreement?

A. Other than your telling everybody--I didn't suggest or Bua didn't suggest what percentage I should get. You did.

Q. Well, I handed you that agreement. Now, it had to be as a result of our discussions on this matter, Mr. Smith.

(T.87) A. Before that? Q. Yes.

THE COURT: Well, this later agreement, this was executed? You did sign a later agreement?

THE WITNESS: With Hugo Bua, yes. I think that was dated the 19th of December.

MR. WERNER: We have that here, your Honor, and I'd like to introduce it as an exhibit. THE COURT: All right.

MR. WERNER: If Mr. Dinan would lend it to me.

MR. DINAN: You want my files, Counsel, to put in evidence? Do you have an agreement? MR. NEIMAN: Sure.

MR. WERNER: May I?

MR. NEIMAN: May we have a moment, your Honor. (Pause)

BY MR. WERNER:

Q. I want to back up just a bit, Mr. Smith, to July 10th, 1967, at which time you entered into an agreement with Hugo's Continental providing generally for your services as a musician for five hours a night and meals, I believe. And I show you this agreement and see if you recall it. A. Yes.

(T.88) MR. SMITH: Do you want to know why that agreement came about?

Q. Well, I think I can--at that time Mr. Alesi, who was your music partner, decided to go into the business of Hugo's Continental with Mr. Bua?

A. Right.

Q. Therefore, that interfered with your relationship with Mr. Alesi, who were a unit?

A. Well, no. We came up on a union contract, a musician's union contract through an agency that had booked us into Hugo's Continental. And Frank Alesi was the contracted leader and I was--these kind of agreements are made through the union with just one member and it is up to the leader to

hire the side men. So even though Frank and I worked for years as a team, one of us basically would take care of the union; and Frank did it. So now that Frank was going to become part of the management of this place, it left me with no contract there. So I wanted to make sure I would have some kind of a musician's contract, you know, to make sure I got paid every week. And that's what this contract was, this one dated July 10th.

MR. WERNER: Any objection, Mr. Dinan?

THE COURT: It is just background anyway, isn't it?

MR. WERNER: Yes, your Honor. Mr. Neiman wants it introduced, if I'm going to introduce the others.

(T.89) THE COURT: Okay.

MR. WERNER: May this be marked Plaintiff's Exhibit 4.

THE COURT: Exhibit 4.

(Plaintiff's Exhibit 4: Agreement dated July 10, 1967, marked full exhibit.)

* * *

MR. WERNER: July 10th, 1967.

Q. (By Mr. Werner) Now I show you an agreement dated December 19th, 1967 between Hugo Bua and yourself prepared by, I take it, your attorney at that time, Lillian Kaplan? A. Kaplan, right.

Q. Do you recognize that, Mr. Smith? A. Yes.

THE COURT: All right. Exhibit 5.

(Plaintiff's Exhibit 5: Agreement dated December 19, 1967, marked full exhibit.)

BY MR. WERNER:

Q. And I also show you an agreement dated December 19, 1967 between you and Hugo's Continental Restaurant, Inc. providing for generally earning provisions depending upon the gross business of the corporation.

(T.90) A. Yes. Well, it kept my salary as a musician and stated my working in the office, and then for what I would be doing what I would be getting. Yes, percentages. A percentage agreement, yes.

MR. WERNER: Exhibit 6.

(Plaintiff's Exhibit 6: Agreement dated December 19, 1967, marked full exhibit.)

BY MR. WERNER:

Q. Mr. Smith, now I'm trying to characterize this period around November 22nd or so of 1967. There were very terrible financial problems in this corporation, were there not?

A. Well, as I began to work in the office there were people constantly calling. People coming in. I believe even a sheriff came over wanting to take out the register. I was there. In other words, I was there like from ten o'clock in the morning, so I began to see everything happening.

THE COURT: Began being hounded by creditors, right?

THE WITNESS: Yes.

Q. (By Mr. Werner) And on various occasions when a creditor would call you would call me at my office to determine what you should do?

(T.91) A. Right.

* * *

Q. And I would tell you to give you the best advice that I have as far as keeping the creditors...

A. Or if you happened to know him you would talk to him yourself.

Q. Right. Now the time came, about the latter part of November, when Mr. Bua was all upset because of unpaid taxes. Do you remember that occasion, Mr. Smith?

A. Well, somehow some kind of an audit was taken. I don't know because I didn't have anything to do with the audit. I just knew it was taken. I think that as people were calling I was writing down that such and such called and said this was owed, and such and such. And as this list grew and there was no record of it, really, around, an audit was taken. And on the day that that audit came in, that's when there was this big explosion. There was a big explosion, like an emotional explosion.

THE COURT: An audit came in? THE WITNESS: Yes.

THE COURT: You mean an accountant? THE WITNESS: Yes.

(T.92) THE COURT: Prepared an operating statement or something?

THE WITNESS: I don't know. An audit.

THE COURT: You call it an audit. But this was from your own accountant or the business' own accountant?

THE WITNESS: It was somebody hired by the business. I didn't have anything to do with hiring.

BY MR. WERNER:

Q. All right. So a meeting was held as a result of that accountant's report that showed all kinds of obligations? A. Right.

Q. Including taxes? Do you remember that?

A. It must have been there, yes. I really don't remember what was and what wasn't.

Q. But prior to that particular time, you and I had never discussed anything about unpaid taxes, did we?

A. It was never brought up. We didn't know anything about that.

Q. As a matter of fact, there was a full time bookkeeper there who made out checks and reports and payroll, etc., etc. This was Mr. Bua's sister, is that correct?

A. Sister, right; Theresa Bua.

Q. And she had been there for a period of months before you became active

in the office? (T.93) A. Yes.

Q. All right. Now, at this emotional meeting--and I was there and I was emotional, too, because it seemed like this was the end of the business--do you recall Mr. Bua saying that he was not a citizen, that if the taxes were not paid he was going to be deported?

A. I remember it being brought up, but I don't remember if he brought it up, you brought it up, or --

Q. But you remember hearing that remark? A. I heard it, yes.

Q. Then there were further discussions in an attempt to get money to the corporation so that these taxes could be paid, is that correct, Mr. Smith?

MR. NEIMAN: If your Honor please, at this point I would like to object to the leading questions. Up to now it was preliminary and I think permissible. But this becomes the crux of the case here and I think the witness ought to be the one who testifies.

MR. WERNER: I'll withdraw the question, your Honor. He's perfectly right.

Q. (By Mr. Werner) Mr. Smith, accounts receivables were purchased from the corporation by Mr. Kerin. Do you recall that?

A. What's that, the money that was owed? What accounts receivables?

(T.94) Q. Yes. Accounts receivables are bills that customers owed.

A. Yes. Hugo issued some kind of a credit card, I don't know. And I guess the money that was owed on these people charging, yes. If that's what you're talking about.

Q. And do you recall how that money came to Hugo's Continental, Inc.?

A. Physically? Q. Yes, physically.

A. Truthfully? Q. Of course.

A. Okay. You--I guess you and the bookkeeper talked over the amount of money. I don't know how it came about. And then I went across the street with you to the office building across the street and you took me into one of the offices. It was the insurance company that was there.

Q. Mr. Kerin's office was there.

THE COURT: Where?

MR. WERNER: Across the street to the office building where Mr. Kerin's office was, your Honor.

A. No, it wasn't his office. It was the other fellow's.

Q. Mr. Kaplan's office? A. Yes. Q. All right.

(T.95) A. He was in insurance, right? Q. Yes, that's correct.

A. The fellow that was in insurance.

Q. Life insurance.

A. Yes. And you told his treasurer, or somebody that was in charge of the money, to make out a check. And then we went back across the street with the check.

Q. And do you know what happened to that check, Mr. Smith?

A. Well, the procedure was since people were putting--or there were a lot of checks out, a lot of checks had bounced on that corporation, Hugo's Continental, you had prior to that taken me to the bank and suggested that I open up an account with my name, Robert J. Smith, and the address of the club; to put money in there so that we could account for every dime that came in and every dime that went out, and not to use the corporation. Or to transfer it to the corporation account, whichever was best. So I assumed that that check, since it was the procedure to put it into the Robert J. Smith account and then transfer the money from the Robert J. Smith account to Hugo's Continental, that's what must have happened to it.

Q. Would you describe my emotions, if you can, at that particular time relative to my feelings towards Hugo Bua and the corporation?

(T.96) A. Well, you were disgusted with Hugo and Frank and the way the whole thing was being run.

Q. Now, did I say anything to you relative to the taxes that were owed to the United States Government?

A. Well, there was always the talk of the liquor bills and that the liquor salesman could cause the place to be closed down, to lose their liquor license if the liquor bills weren't paid.

Q. Mr. Smith, I'm asking --

A. Well, I'm going to bring it to the point of that. Okay? Q. Okay.

A. Now, you brought up that fact. And you also brought up the fact that there might be money owed to the State and there might be money owed to the federal government. But no one was sure of that.

Q. Of how much? A. Yes. Q. Right.

A. No one was sure, really, of anything.

Q. So what did I request you to do with Mr. Bua?

A. Well, you asked Bua to go down here and you told me to go with him to make sure he went down to the Internal Revenue.

Q. And did you do that, Mr. Smith?

(T.97) A. Yes. It was either the next day or the next business day. If the meeting was on a Friday, it was on a Monday. And when we went down there and asked for people down there, whoever we asked for, we were just told that there was being some kind of an organizational change being made in the department at that particular time, to leave our names and that somebody would get in touch with us.

Q. And that was the end of it?

A. And then I left January 1st or 2nd, around there, and there was nobody who came around to talk. It was never brought up again after that time.

Q. Mr. Smith, what is your recollection of my presence in that restaurant subsequent to November 22nd, after that emotional meeting?

A. You mean after that particular meeting? Q. Yes.

A. You were still coming in pretty daily, like you always were. I was still calling you on the phone.

Q. You were still calling?

A. Yes. I still checked.

Q. Are you sure you saw me?

A. I was still checking with you. In fact, you were the first one I called when I said this has become--I don't know how to handle all this.

(T.98) MR. SMITH: I called you like the day after New Year's. I guess January 1st I called you at your home. I said I can't stay on, I don't know what's going on here, and I says I want to leave, I'm a musician, I don't know what's going on here.

Q. What was my answer?

A. You said if you're disgusted with it and you don't want to stay on, go back. And then I told--the next business day, like I told Alesi and I told Bua.

Q. But on November 22nd my attitude towards the whole business was one of disgust?

A. Yes. That day of the meeting, I don't remember what day it was.

Q. In that period, whenever that meeting was held? A. Yes.

MR. WERNER: All right. Thank you, Mr. Smith.

CROSS-EXAMINATION BY MR. DINAN:

Q. Mr. Smith, you first became employed in July of 1967?

A. I believe it was May originally. I read in there sometime in May on the union contract, as I said. If you look at my original affidavit, statement, it will give you a date. There's an original statement by me.

(T.99) Q. When did you first go into the office during the day as a bookkeeper? What month, do you recall?

A. I never went in the office as a bookkeeper.

Q. What did you go into the office as?

A. Answering the phone, learning about the business. But as a bookkeeper, no. I know nothing about keeping books.

Q. When did you first do that?

A. Go into the office and work there? Q. Yes.

A. It must have been sometime in October.

Q. In October of 1967? A. Yes.

Q. Now, what hours were you working?

A. I went in at ten in the morning and I really stayed there because then I would start playing piano at nine o'clock, eight o'clock at night.

Q. So how many hours a day did you work for Hugo Bua at the time you

were both a musician and worked in the office?

A. Ten in the morning--ten at night; that's twelve--sixteen hours a day.

Q. At whose request did you begin working in the office of the Continental Restaurant?

A. Originally? Q. Yes. A. Asked about? Mr. Werner.

(T.100) Q. Mr. Werner. Now, how did you come to know Mr. Werner so that he could have made such a suggestion to you?

A. Well, when I first began to play there I didn't know anybody. And then after a while Frank Alesi told me that he was going to go into the management of this. And then Frank introduced me to Mr. Werner. This must have been sometime in six or eight weeks after I was there as a pianist.

Q. Did Frank tell you who had invited him to partake of the management of Hugo's Continental Restaurant?

MR. WERNER: I'll object to that, your Honor. Mr. Alesi --

THE COURT: You can answer it yes or no.

* * *

A. Did he tell me who?

Q. (By Mr. Dinan) Yes. A. Yes.

Q. Who?

MR. WERNER: Objection. THE COURT: Overruled.

A. Bua, Mr. Werner and I was told also that it was Mr. Kerin and Mr. Kaplan.

(T.101) Q. All right. Now, you say while you were playing piano there you frequently saw Mr. Werner there. You observed that yourself? A. Yes.

Q. Starting when? When you first went to work with Hugo's Continental Restaurant?

A. Well, I became aware of him more later on, you know.

Q. Why? Why did you become more aware of him?

A. Because I was told that he was the big man there, the main man there.

Q. Who told you that? A. Frank.

Q. Frank Alesi? A. Yes. Because at that time I really had nothing to do with Bua, you know. Frank was the leader. He would talk to Bua and so on.

Q. Did you, however, ever talk with--well, did you talk with Mr. Bua about your services as a musician in July of 1967? A. Oh, yes.

Q. Did you talk to Mr. Bua about your employment as an administrative employee when you first went into the office? Did you discuss that with Hugo?

A. Initially? Q. Yes.

(T.102) A. No, I don't think so.

Q. Just with Howard Werner? A. Yes.

THE COURT: Well, didn't Hugo ever say to you, "What are you hanging around the office for, what are you doing here"?

THE WITNESS: No. In other words, there would always be some kind of a meeting on a Saturday afternoon or sometime during the day with Mr. Werner, Mr. Bua, Alesi, maybe the chef. Did you mean by "initially" presented to me the idea? Q. (By Mr. Dinan) Yes.

A. Initially by Mr. Werner.

THE COURT: Were you getting paid for this extra work in the office?

THE WITNESS: At that particular time?

THE COURT: At any time.

THE WITNESS: Well, my salary went up, I guess, a little bit from when I was a musician, yes. THE COURT: All right.

Q. (By Mr. Dinan) We'll just pursue that for a moment. How much was your salary per week while you were a musician?

A. It must have been around three hundred.

(T.103) Q. Union wages?

A. I really don't remember if that was the union scale or not.

Q. Do you recall how much your salary increased when you started working the additional ten hours a day?

A. Maybe \$25 a week. Q. \$25 a week?

A. I think there was \$5 attributed to my room rent and I would be able to eat there. Now it was taken out more in trade than in actual money, like.

Q. You weren't investing heavily in the market then, I take it? A. No.
Q. Did that figure that your salary was raised, was that figure negotiated with Mr. Howard Werner or with Mr. Bua?

A. That salary figure--with Bua. Q. With Mr. Bua? A. Yes.

Q. How frequently, when you became active in the management of the company, how frequently would you meet with Mr. Bua and Mr. Werner?

A. Well, I didn't make any decisions. So you're saying "management". I really didn't say this is this and this is that, when I worked in the office. Because that's exactly what I did: I worked in the office.

(T.104) Q. While you were working in the office--we won't call you a clerk, we'll call you an administrator. How's that?

A. What is that? What does that mean?

Q. No decision making. When you were in the office how frequently would you meet with Mr. Bua and Mr. Werner?

A. Well, Mr. Bua I would see every day.

Q. Pardon? A. Mr. Bua I would see every day.

Q. On what occasion every day? Every noon, every morning; when?

A. Just all during the day. He was there. There was luncheon business. He was there for the lunch and supervising the lunch. He was even working in the kitchen, I believe, at that time.

Q. Mr. Werner was? A. No. Mr. Bua I'm talking about.

Q. Now, did you see Mr. Werner at the restaurant periodically while you were working in the office?

A. If not every day at five o'clock, at least every other day.

Q. What would he say to you and what would you say to him, when you were in the office, when he was in the office every other day?

(T.105) A. It would be a resume of what happened that day.

Q. Would he ask that you report to him the various happenings of the day?

A. Basically, yes.

(Third-party Plaintiff's Exhibit 1: Two documents, bank account record of Smith, marked for identification.)

BY MR. DINAN:

Q. Mr. Smith, I show you now what has been marked for identification only as Third-Party Plaintiff's Exhibit 1. Will you take a look at that exhibit and tell me what that is?

A. It looks like a bank account or something.

Q. Is that your signature? A. That's my signature, yes.

Q. So you had authority to draw checks on an account?

A. What account was this?

Q. Robert J. Smith, Business Account. Do you recall having that business account? A. Yes.

Q. Do you recall what bank you had it in, Mr. Smith?

A. I think it's the Connecticut Bank and Trust.

Q. Do you recall what the purpose of that bank account was?

A. I had said this before. People were not willing to accept those Hugo Continental bank account checks, checks (T.106) with these kind of things. They didn't want it because they were bouncing constantly. And it was agreed that nothing should be paid in cash, there should be a record of everything paid. And people were holding onto some of these bad checks. So it was suggested that I open up an account that way, Robert J. Smith, and that some of the bills I guess paid out of that account --

THE COURT: Robert J. Smith? What was the full title of the account?

THE WITNESS: Robert J. Smith.

MR. DINAN: Business Account, your Honor.

THE WITNESS: Business Account. And then the address of 904--was it 904 Farmington Avenue?

Q. (By Mr. Dinan) Mr. Smith, you began to sign checks in late October--early November, is that correct? A. Yes.

Q. Who told you to transfer funds? Could you, in fact, transfer funds from Hugo's Continental general bank account to that special business account in your name?

A. I imagine I could, I guess I was the signatory on that other Hugo's Continental. I don't really remember. I don't really remember. Was I?

Q. Do you ever recall transferring funds from Hugo's Continental general account to the special Robert Smith business account? Do you have a specific recollection?

(T.107) A. I may have. The normal procedure was just the other way around: Was putting it into--actually I guess after the first couple of weeks there was no use for that Robert J. Smith account because then I guess all the bad checks on Hugo's were either taken care of or something. But it was just the procedure was kept the same. The money was put in, usually--usually, in Robert J. Smith account. Then transferred into the other. Usually. The exact procedures of how we did it as the weeks went on, individual things, no, I don't remember.

Q. While you had the authority to sign checks did Mr. Alesi also have the authority to sign checks on any of the corporate bank accounts?

A. I believe so. And I believe Bua, too.

Q. All right. Now, how would you determine which checks should be drawn to pay a creditor? You stated previously you had nothing to do with the books of account of the corporation, is that correct?

A. Well, if people would call and say X amount of dollars in money was owed, I would present these particular--I made a list, I guess, and presented it to Mr. Werner. And then we would discuss --

(T.108) Q. Let me go back to that, please. You said someone would call in, some creditor; the liquor man or the cigar man, someone like that?

A. Yes.

Q. And say Hugo owes us so much money; is that correct? A. Right.

Q. This is while you were working in the office? A. Yes.

Q. Then you would take that information and record it on a pad or something?

A. Usually, yes. Maybe a pad, a little pad, then at the end of the day I would put it down. --

Q. You would summarize it? A. Yes.

Q. Then what would you do with that information?

A. I would usually show it to Mr. Werner. Q. When?

A. At the end of the day. Usually it was five o'clock, around that way, he would come around.

Q. And is it your testimony that Mr. Werner then customarily came in at five o'clock to discuss the bills that had to be paid with you?

A. During the period that I was working in the office, yes.

Q. And that was from the period we had previously (T.109) established being late October-early November through to the time you left, is that correct? A. Yes.

Q. And you stated previously you left in January of 1968?

A. January; around the beginning of January. If it was '68, yes. I don't remember the exact year; '67, '68.

BY THE COURT:

Q. Well, you showed this list of creditors or list whose bills had not been paid to Mr. Werner every night? A. Yes. Basically, yes.

Q. And so what about it when you showed it to him, what happened? What was that for?

A. Well, say he would say how much, did you ask this man is he willing to wait for his money. And I would say well, yes, I asked him that. And what is he saying? You know, it would be discussed that way.

Q. And then what? Any decisions being made as to who would be paid?

A. It was usually--it was some kind of a small bill. Mr. Werner would say get rid of it, you know, just take care of it, pay it. If it was something big, then it was usually a meeting that was called with Alesi and so on and Bua and Mr. Werner. (T.110) It was very confusing because nobody really knew what--if these people that were giving all these bills in, that they really owed these bills. That's why at this particular time, after I was there for three or four weeks or so, Mr. Werner suggested that accountants go

through the company's books and find out what was really going on.

Q. But you didn't pay any bills, select any to pay yourself?

A. Make individual selections? Q. Yes.

A. Well, let's put it this way: If the meat man was coming that day --

Q. You've got to pay him?

A. You've got to pay him, yes, or he wasn't going to deliver the meat. It was like it was C.O.D. at the time.

Q. But I'm talking about bills --

A. Long overdue bills? There were even bills from I think it was a bankrupt corporation because I remember there was a Boston Meat Company that was constantly calling and saying that they owed a couple of thousand.

Q. Now, those bills that you didn't pay C.O.D. --

A. The final judgment on who was going to pay? No, I wouldn't make that final judgment.

Q. Who would?

(T.111) A. It was always with a discussion, you know. It was always that type of thing. Basically, Bua and Mr. Werner. If it was of any importance than normal every day, you know, pretzel man coming in.

* * *

AFTERNOON SESSION

(T.112) THE COURT: How much longer will we take today?

MR. DINAN: We have Mr. Smith and there is another party, Mr. Alesi, that I hope will show up this afternoon. I would imagine my questioning would take a total of an hour.

THE COURT: All right. Let's get on with it, then.

CROSS-EXAMINATION BY MR. DINAN (Continued):

Q. Mr. Smith, before the noon recess we had learned that you spoke with Mr. Werner and that you were invited to start work in the office of Hugo's Continental at Mr. Werner's invitation. At one point in time do you recall there being a meeting held which was attended by Mr. Werner, Mr. Bua, Mario Bua and yourself, at which Mr. Bua became very emotional? Do you recall that meeting in November of 1967? A. Yes, I do.

Q. And at that meeting Mr. Werner informed you that he had an audit of the financial affairs of Continental done and that taxes were due and owing, is that not correct?

* * *

(T.113) (Question read back.)

A. At that meeting there was--that an audit was done, yes. About taxes, no, I didn't know.

Q. When did you learn that the taxes had not been paid, that federal taxes were due and owing by Hugo's Continental to the United States?

A. Really that there was money owed? When I got --

Q. That federal taxes had not been paid.

A. When I got a notification that following June that I was going to be assessed, or that it was a lien, or whatever it was. Officially, you're talking about?

Q. No, not officially, Mr. Smith. I'm talking now about when you first became aware that Hugo's Continental Restaurant had not paid federal taxes due the government.

A. Shall I relate the details of that day and so on?

Q. You would answer the question, if you will, Mr. Smith.

A. I guess that day that there was a possibility.

Q. Well, in fact you were told that day that the taxes were due and owing, were you not, Mr. Smith?

THE COURT: What?

Q. You were told on that day that taxes were due and owing the United States Government?

A. It must have been brought up in the discussion. I was, like, listening to the whole thing; yes.

(T.114) Q. Well, you were listening so well, Mr. Smith, that you actually went to the Internal Revenue Service about that time with Mr. Bua upon

Mr. Werner's instructions to discuss precisely that issue with the Internal Revenue Service, were you not?

A. No. Mr. Werner asked Mr. Bua to go. And --

Q. Go where?

A. To Internal Revenue to find out, to find out if there was money owed or what the situation was.

Q. Mr. Werner --

A. Mr. Werner asked me to go with Mr. Bua to make sure Mr. Bua went, and whatever was told to him that he didn't lie to Mr. Werner about it. In other words, that I would relate the message, whatever the truth was about the situation. In other words, my job was basically to make sure he got there that day and that whatever was told him was correctly related to Mr. Werner; that Bua wouldn't lie about it or, you know.

Q. But at that meeting in November, the fact that taxes had not been paid was discussed and Mr. Werner was quite angry when he heard about that, is that not correct?

A. Taxes were brought up. I don't remember if the audit said that it was owed or it was not owed. That there might be a tax problem, yes.

(T.115) Q. Well, then was it your understanding perhaps that Mr. Werner sent you down with Mr. Bua to ask the Internal Revenue Service if his tax situation was okay?

A. He sent me to make sure Bua went.

Q. And when you got here what did you learn?

A. Mr. Bua had a name--I don't remember the name--and he asked for this particular gentleman. And we went from one office to another office and to another office. Maybe we stayed thirty minutes to an hour. And then we left. And what was told to us is that there was being a regional or organization or district change, and that somebody would get in touch with Bua.

Q. All right. Now, at the time that you went to the Internal Revenue Service you didn't have any money in hand, did you? A. No.

Q. No one gave you a check to pay the taxes? A. No.

Q. All right. Now, at this meeting in November of 1967 Mr. Werner assigned various duties and responsibilities to various people, did he not?

A. Yes, yes.

Q. Now, do you recall what duties and responsibilities he assigned to you?

A. To continue working in the office and to make sure (T.116) that whatever happened during the day was truthfully related to him. I think the reason I was there was to make sure that everything that happened was related correctly to Mr. Werner. Because Alesi and Bua had been lying constantly to him.

Q. Mr. Alesi had also been lying?

A. Yes. I think Alesi--this is a personal opinion now--Alesi was put in to make sure Bua ran the business correctly or ran it right, and then when he aligned himself with Bua and Mr. Werner found out that they weren't telling the truth about which bills had been paid or bills had not been paid, that's when he considered offering me a position of learning the business and working in the office so that I could be his eyes and ears in the office.

Q. Well, was this a meeting also where the idea of having --

A. By the way, the chef was also there at that meeting.

Q. All right. Now, was he assigned any duties and responsibilities by Mr. Werner?

A. Take care of the kitchen staff.

Q. And that was Mr. Bua?

A. No. The chef. The chef was Carlos somebody.

Q. What duties and responsibilities were assigned to Mr. Hugo Bua?

(T.117) A. Well, they needed a daytime chef and they needed a nighttime chef, so Mr. Werner told Mr. Bua, look, we don't need a daytime chef, you're a chef, you do it. You work this and you do this job and you do that particular job.

Q. So that Mr. Werner sent Mr. Hugo Bua to the kitchen? A. Right.

Q. At night? A. Days.

Q. During the daytime.

A. And then nighttime waiter; maitre d'.

Q. What happened to Theresa Bua, Mr. Bua's sister?

A. She was the bookkeeper and everything, and she just stayed and did her job.

Q. At that meeting you also learned, did you not, that there was a suggestion that KKW buy the accounts receivable of Hugo's Continental in order to put money into the company?

A. The meeting took part in a number of parts. When Mr. Werner came in with this audit report and said look at all the money that's owed and so on, or, you know, what a mess you've made of it, and then he stormed out and then he came back in later and made the suggestion about buying--it was broken up into two or even three different segments between, say, five and eight in the evening.

Q. All right. Now after that meeting you, in fact, went across the street to Mr. Kaplan's office to get that (T.118) check that was to be paid for the accounts receivable, did you not?

A. I went with Mr. Werner, yes.

Q. Do you recall the amount of that check?

A. Not really. Everybody says it's approximately \$11,000. So I guess it's \$11,000.

Q. Now, do you know what that check was for? Were you told what that check was to be used for?

A. To pay bills.

Q. What bills?

A. Right then, when I got the money, it wasn't decided.

Q. Who told you it was to pay bills?

A. Mr. Werner.

Q. All right. What did you do with the check?

A. To try to get the business so it could continue on running.

Q. All right. Did Mr. Werner tell you that when you were in Mr. Kaplan's office?

A. No. We were never really in an office. It was a big--you know, with secretaries sitting around. It was like a large office, like an insurance office would be. And the check was given to Mr. Werner by--I guess--I don't know. It wasn't Mr. Kaplan; by somebody else there. Maybe the treasurer of the company or something.

Q. But Mr. Werner told you that was to pay "bills" of Hugo's Continental Restaurant?

(T.119) A. Yes. They were mainly worried about liquor bills because they were so overdue on them that their liquor license might have been revoked at that particular time.

Q. All right. When you got the check, where did you take it?

A. Into the office, I imagine.

Q. Into Hugo's Continental's office? A. Yes.

THE COURT: What time was this? Was this in the daytime?

THE WITNESS: No. It was early evening.

THE COURT: Early evening? THE WITNESS: Yes.

Q. (By Mr. Dinan) Did you deposit that check in Hugo's Continental's bank account?

A. The money was deposited in an account. I don't remember if it was in mine--in the Robert J. Smith account or in the Hugo's Continental account.

THE COURT: Had you previously had it in the Robert J. Smith account?

THE WITNESS: It must have been opened sometime in October, yes.

Q. (By Mr. Dinan) So the money was deposited in Hugo's Continental bank account?

(T.120) A. One of the two. I'm not positive. You could probably tell me better.

THE COURT: If you had a Robert J. Smith account before this, where did the funds come from that went into that account?

THE WITNESS: At night, the receipts. This was the original procedure

with opening that account. At night the receipts would go into a night depository or the bookkeeper would take the money in the morning, whoever was in first, if I was in first, and deposit in that account. Then what was needed to be paid, either on the Hugo's Continental account would be taken and put in there, or money left if the meat man was coming in. Because-- say the meat man, I'm using that. He wouldn't accept Hugo's Continental's checks.

(Third-Party Plaintiff and Defendants' Exhibit 2: Copy of CBT bank statement 10/30/67 to 11/30/67, marked for identification.)

MR. DINAN: May it please the Court, at this time I have had marked for identification a copy of the bank statement of Hugo Continental, 804 Farmington Avenue, West Hartford, Connecticut. (T.121) This is for the period October 31, 1967 through November 30, 1967. Counsel have been shown this and previously have stated there would be no objection to introducing the original--I mean the copies of this document, instead of the original. That record shows that on approximately November 21st there was deposited in Hugo's Continental bank account the amount of \$11,462.42. I will introduce this into evidence when the government puts on its case in chief, your Honor.

Q. Now, after having that check deposited in Hugo's Continental bank account --

THE COURT: That was the check from Kaplan?

MR. DINAN: Yes, your Honor.

(Third-Party Plaintiff and Defendant's Exhibit 3: Group of checks dated November 20 and November 21 of 1967, marked for identification.)

BY MR. DINAN:

Q. I show you now what has been marked for identification as Defendant and Third-Party Plaintiff's Exhibit 3. They are a group of checks, Mr. Smith. Would you take a look at those and tell me if you can identify them?

A. They are Hugo Continental checks with my signature on them.

(T.122) Q. And what date or dates were those checks signed by you?

A. After that meeting.

Q. That was after the November meeting? A. Yes.

Q. Now, there is a date on each one of those checks, is there not?

A. I notice. The 20th, the 20th--they are all dated the 20th. One dated the 21st, the 21st. They were all dated prior to the 22nd.

Q. They were all dated prior to the 22nd? A. So far.

Q. As a matter of fact, they were either dated on the 20th or 21st, were they not? A. Correct.

Q. Would you look at the first three or four of those checks, please, and tell us to whom they were made payable?

A. The first one was Administration of Unemployment Compensation.

Q. I'm sorry. Would you repeat that for me, please?

A. The first one was for the Administration of Unemployment Compensation.

Q. What is the next check?

A. It looks like Fordham Distilleries, Incorporated.

(T.123) Q. Do you have another check? How much is the one to the distilleries corporation, Mr. Smith?

A. This one is for \$53.

Q. All right. What is the next check?

A. State Tax Commission. The next one is--I guess it's Hartley and Parker, Limited, it looks like. It's probably another distiller. That one's for \$509.

Q. Could you tell me, please, who made out those checks?

A. They're not my handwriting.

Q. Do you know who made them out?

A. It looks like the bookkeeper.

Q. Who was the bookkeeper at that time?

A. Theresa Bua.

Q. Who directed you to sign these checks and cause them to be issued, Mr. Smith?

A. Mr. Werner.

Q. Mr. Werner? Did you know that this was the money that was put into that bank account from the purchase of the accounts receivable? A. Yes.

Q. And did you know at the time that that money was supposed to be used to pay only federal taxes? A. No, I didn't.

(T.124) MR. NEIMAN: Objection, your Honor. I don't think that has been demonstrated, I don't think that has come out in evidence at all.

MR. DINAN: Your Honor, the answer to the question is no, he didn't know that.

THE COURT: In view of the answer, it may stand. He doesn't know.

Q. (By Mr. Dinan) At the time you made out those checks to cause them to be issued, was there any discussion about federal taxes or the payment of federal taxes?

A. Just what had been discussed at that meeting.

THE COURT: Well, now this bunch of checks --

THE WITNESS: Were all dated prior, I notice.

THE COURT: --that were issued under the date of November 20th and 21st, were they issued after you deposited the \$11,000 check?

THE WITNESS: I imagine so. I would make sure that the money was in the account before I wrote out--I would never write a bad check out.

MR. DINAN: Your Honor, the record will show when we introduce it from Exhibits 2 and 3 that the money that was put in the account came out in these checks. They total exactly eleven some odd thousand dollars. So we will connect that up.

THE COURT: The account was very low until that deposit was made?

(T.125) MR. DINAN: There was money running through the account. But the balance was pretty low. THE COURT: Yes.

MR. DINAN: There was cash flow.

BY MR. DINAN:

Q. Did you have any opportunity to discuss with anyone else the issuance of those checks that I've just shown you as Defendant and Third-Party Plaintiff's Exhibit 3? Did you discuss those checks with Mr. Eua?

A. No. They were just given to me to sign.

Q. And do you recall the circumstances in which they were given to you? Was it during the day or did Mr. Werner come over specifically to have you issue these checks, or was it at your five o'clock meeting? When was it?

A. No. They were just given to me by the bookkeeper.

Q. But you specifically recall Mr. Werner telling you to issue those checks?

A. Yes.

MR. DINAN: No further questions.

CROSS-EXAMINATION BY MR. NEIMAN:

Q. Mr. Smith, let's go back to the day you went down to the Internal Revenue Service and made your inquiries.

MR. WERNER: Pardon me, Mr. Neiman.

(T.126) Excuse me, your Honor. I think that in the sequence of events that I would have the right to cross-examine at this point. Not that I want to prevent Mr. Neiman.

THE COURT: I don't know what the order is here.

MR. NEIMAN: I think this is the order we've been following before.

THE COURT: Who put the witness on? Did you?

MR. WERNER: I did, your Honor.

THE COURT: Well, we will give Mr. Neiman a chance to cross-examine, then, before you get to him on redirect. MR. WERNER: I see. Yes, sir.

THE COURT: Okay, Mr. Neiman.

Q. (By Mr. Neiman) Would you turn your thoughts back to the date you went to the Internal Revenue Service and made your inquiries. A. Yes.

Q. Now, I recall you said you stayed there an hour or two perhaps, is that right? A. Right.

THE COURT: Half an hour to an hour, he said.

Q. (By Mr. Neiman) Is that approximately correct?

A. Approximately.

(T.127) Q. What time of day did you finish up?

A. Before lunchtime.

Q. And what, if anything, did you do thereafter?

A. I called Mr. Werner.

Q. All right. Did you call him immediately? A. Soon after, yes.

Q. Right from this building, if you recall?

A. If not from the building, from a booth close by.

Q. And what did you tell Mr. Werner in that conversation?

A. Exactly what happened: That nothing happened.

Q. And do you recall now what he told you?

A. He says, well, take care of the other things, the liquor bills. Take care of the other bills.

Q. Take care of the other bills, the liquor bills, is that right? That's how you remember it. All right. Then mechanically speaking, what did you do? Did you go back to the restaurant? A. Yes.

Q. Did you have any further conversation with Mr. Werner? Your answer is no? You are shaking your head. A. No. No, I didn't.

Q. All right. Then who again gave you the checks to be signed?

A. Then sometime during that day the bookkeeper gave me all these checks that were made out.

(T.128) Q. Did you tell her to make them out?

A. No. I didn't know, really, what was to be made out.

Q. So did you have any communication with her at all after you got back from the IRS? A. No. -- About making out the checks?

Q. Yes. A. No.

Q. All right. So the next thing that happened was she gave you the checks?

A. Right.

Q. And then mechanically what happened after that?

A. I signed all the checks and she must have mailed them out.

Q. Now was this what you had been doing routinely all the time before, during your employment?

A. Yes. Maybe if she was out to lunch and a supplier came in, then I would make out the check. But otherwise she made out the checks and I signed them.

Q. Now, when you say "make out the check", would you ever make out a check from Hugo's Continental account?

A. I might have. Not generally.

Q. And how about the checks on the Robert Smith account, would you generally make those out?

(T.129) A. Sometimes I would--yes. No, no, not generally. I'd make them out sometimes and sometimes she would make them out.

Q. And where was that special account kept, the Robert Smith account?

A. The checkbooks, you mean? Q. Yes.

A. They were all up in the office.

Q. And did you ever, at any time, do any bookkeeping?

A. No. Other than compiling the information on the calls and the people I talked to, no.

Q. Now, going back now to that audit that we've heard about, do you know who designated the accountant to make the audit? Who decided who would make the audit?

A. That was a recommendation of Mr. Werner.

Q. I see. In your presence? A. No.

Q. How do you know this?

A. I was told by either Alesi or Bua.

Q. Now, all of this took place before you had any kind of a written agreement relating to the nature of your services, is that a fact? A. Yes.

Q. Now, I'm not talking about your services as a musician, but your services in the office.

(T.130) A. Yes.

Q. Now, did you have more than one written agreement or was it just one?

A. I had first the one as a musician services July 10th, and then another one on December 19th or 20th.

Q. And it was a two-part agreement on December 19th and 20th; one is your services as a musician and the other is your services as an office service, is that right? A. Yes.

Q. Is that the only written agreement that you had relating to your office services now? A. Yes.

Q. How about that one that was introduced into evidence that you looked at that wasn't signed?

A. That was just presented to me and the number of other people, like Bua, Alesi, Bua's brother, one afternoon at Hugo's Continental. By Mr. Werner.

Q. Sorry. I didn't want to interrupt you. Was that ever discussed with you before it was shown to you? A. No.

Q. And particularly the part about your lending money to Mr. Bua, was that ever discussed with you?

A. Oh, no. Because I would have said no immediately.

Q. I see. And in fact what did happen when they showed you the agreement? (T.131) A. I said no.

Q. Immediately? A. Immediately.

MR. NEIMAN: You may inquire.

REDIRECT EXAMINATION BY MR. WERNER:

Q. Mr. Smith, you pictured me at that period of time that you were actively involved, which starts around October or November of '67, as a person who was able to direct things and that they were done in accordance with my direction; is that correct? A. Yes.

Q. All right. There came a time around September or October in which you had some knowledge relative to running a nightclub at Hugo's Continental, is that correct?

A. Have I ever ran a nightclub prior to that?

Q. No. There came a time -- A. Yes.

Q. -- around that period where Mr. Bua wanted to run a nightclub at Hugo's Continental? A. Yes, I remember that.

Q. All right. And what was my reaction to it?

A. I think you were against it. But if you remember, I had a foot ailment that had me on my back for two or three (T.132) weeks. So I wasn't really in too much of the conception or when the first--the first two or three weeks I was out sick. As a matter of fact, I was back in New York with my feet up, for two or three weeks.

Q. But you were active in the participation of that nightclub because you were conducting the orchestra?

A. Only when I came back. Q. When you came back, yes.

A. I didn't have anything to do--I didn't even know the musicians that were going to be there because I didn't have anything to do with putting it together.

Q. I understand. But you did hear me on occasion indicate that this was not a good idea and that it would be something that would lose money for the corporation? A. You weren't for it, I remember.

Q. I was against it. I was very unhappy, vocally against it, if you remember, correct? A. Yes.

Q. And yet they ran a nightclub, in spite of the fact that I thought it was a very bad idea; correct? A. Yes. They ran a nightclub.

Q. Now these checkbooks and the bookkeeping, the payrolls and so forth, who handled all of this?

A. The bookkeeper, Theresa Bua.

Q. And she was there throughout this entire period that (T.133) we're speaking of, October all the way through the time you left?

A. Yes. And before that.

Q. And before that, too? A. Yes.

Q. And she was very active in making up checks and payrolls?

A. She did it all.

Q. She did it all. You and I never got involved in any discussions of that nature, did we, having to do with payroll, with the books, the checkbooks, and

so on and so forth?

A. No, I didn't make out any payroll.

Q. I say you and I never discussed it?

A. I don't know if you ever did or not. No, we never discussed the payroll, no.

Q. Now getting to that sale of the accounts receivables, you stated that either the next day or several days thereafter, after the check was obtained from Mr. Kaplan and brought over to Hugo's Continental, that you came down with Mr. Bua to the Internal Revenue?

A. As far as I can remember it was the next business day. It might have been like this thing happened on a Friday night and we went on Monday. Basically, you know, one or two business day period around that time, yes.

(T.134) Q. And that was November 22nd, you have a recollection of that, and would these instruments recall to you the date?

A. I don't remember the date exactly. I'm taking your word for it.

Q. Okay. Now, when you went over, you got the check. You went back to Hugo's Continental and did nothing more as far as signing checks until you had gone to the Internal Revenue, is that correct?

A. As far as I can recollect, yes.

Q. Then after you spoke to the Internal Revenue you called me and said, well, nothing happened; or you related exactly what had happened. And I said to you, "Well, pay all the other bills", is that your testimony?

A. Generally speaking, that's what you said, yes.

Q. So this would have to be on a day beyond November 22nd, that you went to the Internal Revenue. Whether it was the next day or the next business day, which could have been two or three days later?

A. Well, this wasn't the first time you had said pay the liquor bills.

Q. No, no. I'm just speaking of this time in particular, Mr. Smith. It was some day after November 22nd, which is the day that you picked up the check at Mr. Kaplan's.

THE COURT: I thought it was the 21st, that check.

(T.135) MR. WERNER: Well, the accounts receivable, that is the transfer of the accounts receivable, your Honor, that is dated November 22nd. That's in evidence. It was on the 22nd. Now reading from this statement, and perhaps Mr. Dinan can help me on this --

THE COURT: Well, it's not material.

MR. WERNER: But I don't know if it is the 21st or the 22nd. You see, this says the 21st and this is the 22nd.

BY MR. WERNER:

Q. So you went back to the place and were presented with these checks, and you signed them? A. Right.

Q. Now, I wasn't there at that time, Mr. Smith? A. No.

Q. And I wasn't there at any time, to your knowledge, when these checks were being made up in accordance with certain bills that might have been there?

A. No. When she must have written out the checks, you mean? Q. Yes.

A. No, you weren't there.

(T.136) Q. So I had nothing to do with the paying of these bills?

A. The physical writing out of the checks, no.

Q. Or approving them or even knowing that they were being made?

A. You must have approved them.

Q. No, no. To your knowledge, Mr. Smith. To your personal knowledge was I there supervising payment of any bills, picking out this bill, picking out that bill, having Miss Bua write a check?

A. On the night of that meeting you had her pick out the bills. Like you'd say--you told her like, add up what the liquor company bills are. What is that bill? What is that bill? How much money are we going to need? This I remember: Add up all those accounts receivables. What figure have we got? Okay, we'll give you \$11,000 to pay those bills.

Q. Well, Mr. Smith, what would have been the point of going to the Internal Revenue to determine how much money was owed the Internal Revenue if there was no money to pay them?

A. I don't really know. I was--you know, I didn't have anything to do with that. You know, in other words, if you said to me make sure that I want Hugo to go to the Internal Revenue, make sure he goes, go with him and relate and call me and tell me what happened. (T.137) I went. Your reason behind it, I don't know.

Q. This procedure that you recollect was the night that you picked up the check at Mr. Kaplan's and came back and I'm supposed to have gone over with Miss Bua what bills to pay and what bills not to pay. Is that your testimony?

A. When that happened, when you went over them with her was that particular night of the big--when you showed up with the audit. And then you stormed out. Then you came back in and you asked her to make out this particular list and to make out the audit. That's where you came back in that evening about two or three times.

Q. Well, Mr. Smith, that particular evening isn't it a fact that having received that report of the monies due and outstanding and Mr. Bua's statement concerning the fact that he owed taxes, that I had first said look, we've had enough of this business and we're through, we're not going to lend any more money? A. Yes.

Q. Isn't that a fact, Mr. Smith? A. Right.

Q. And I walked out then? A. Right.

Q. Now, you heard Mr. Kerin testify that Mr. Bua came over to his office, did you not?

A. I don't know if it happened that night.

Q. I agree. I say did you hear Mr. Kerin testify about that? A. Yes.

Q. All right. You did know Mr. Bua was very, very much upset?

A. He was crying that night after you left.

Q. And he was crying. And I had already said that we were finished with this business and we were not about to lend any more money, correct?

A. Right.

Q. And it was subsequent to that time that I came back and said to you if you find out the accounts receivables we will pay you for those accounts receivables, less ten per cent. Do you remember that, Mr. Smith?

A. Not worded that way, no, I don't remember. I just remember that you wanted a list of certain bills, how much they would add.

Q. Accounts receivables, Mr. Smith.

A. And the list of accounts receivables. You wanted a list of certain bills and a list of accounts receivables, that Terry gave you the list of both.

Q. Gave me the list of both.

A. When you came back the second time and you said you had talked to Mr. Kerin and Mr. Kaplan and that you were going to help Hugo out. (T.139)

Q. Well, the corporation. A. Right.

Q. Now she gave me a list of accounts receivables and also a list of payables? A. Yes.

Q. Is that your testimony?

A. Right. So that you knew if there was enough money to pay off these particular bills.

Q. And did I come back again that night?

A. I don't definitely remember the third time. You might have.

Q. You came over to get the check?

A. Now, I don't know if I--I'm trying to recollect. Now, this all started at five o'clock, around five o'clock in the evening when this whole blow-up came. And it went over a couple hour period. Now, the time I went with you to the insurance office there were all people working there.

Q. There were people working there?

A. There were people working there. So maybe --

Q. After five.

A. So maybe it wasn't that same day. Maybe it was the following business day. I'm not particularly -- you know.

Q. So it might have been the next day?

(T.140) A. Or that day, yes.

Q. That you got the check? A. Yes.

Q. Then you know that Miss Bua handed me a list of accounts payables?

A. Money that was owed?

Q. And how much did that total, Mr. Smith? A. I don't know.

Q. Well, Mr. Dinan has introduced testimony here that checks amounting to approximately \$11,500 had been made up and signed--made up by Miss Bua and signed by you. A. Right.

Q. All right? So then there could not have been any money left over to pay the Internal Revenue.

A. I guess not. But I didn't know if the Internal Revenue was owed money.

Q. But that was what you were going to do on a subsequent day or the following business day?

A. Well, you sent Bua down to find out if there was any kind of money owed to the federal government. And you sent me.

Q. Accompanied by you, Mr. Smith.

A. Right. To make sure that he went.

Q. And to find out how much was owed?

A. If there was money owed.

(T.141) Q. No, no. He said there was money owed, didn't he, Mr. Smith?

A. No, I don't remember.

Q. Well, you had testified before that at this meeting you heard that there were unpaid taxes to the government?

A. I heard it brought up.

Q. Yes. You heard somebody say; me, or Mr. Bua, or somebody say.

A. But if there were, I didn't know.

Q. No. But you had information that there were outstanding taxes at that point, Mr. Smith.

A. If somebody mentioned it and brought it up at a meeting.

Q. Well, you already testified that somebody did. A. Okay.

Q. So you had knowledge at that point that somebody thought there were unpaid taxes? A. Right.

Q. Now you want the testimony to stand that I went in there and approved the payment of \$11,500 worth of bills to other creditors and then had you go to the Internal Revenue to determine what the taxes were owed?

A. Well, as I remember, this busy Christmas season was going to come up --

Q. This was November 22nd, Mr. Smith.

(T.142) A. Yes. Right. Q. All right.

A. And this whole busy Christmas season was going to come up. And it was brought up by you or Bua that whatever you didn't have to pay here, whatever other bills you had you'd make enough money by the Christmas season to pay off your bills and clear yourself by the end of the year. But if you did or you didn't, it's what I heard, I didn't know it as a fact.

Q. All right. Just in sequence. I was very upset and said that we were through with lending any more money to the corporation? A. Yes.

Q. At a subsequent time that night I came back and I said we're going to lend money to the corporation to take care of the taxes? A. No.

Q. You didn't hear that?

A. No, you didn't say that. You just said to take care of these bills.

Q. Not the taxes?

A. No. Because the immediate problem, why everybody was getting ready to close down and pack up, because they assumed in the next week the liquor companies were going to close them and take their liquor license away. That was the whole worry at that particular time.

(T.143) Q. But there could have been a lot of money left over after paying the taxes, Mr. Smith, to pay those bills? A. I really wouldn't know.

Q. And wasn't that the purpose of you going down to determine how much was owed to the government?

A. Hugo went down to find out if there was money owed, yes.

Q. With you. A. Yes, I went with him.

Q. All right. So these checks were made out on the 20th, that is the day before, and the 21st. They were prepared by Miss Bua. And you're saying to me that I had okayed the bills on the 21st, is that correct? Not the checks now, a list of bills.

A. You know, if we had a calendar of that year you could really clarify it, maybe. Because if it was a four-day period it would show. But if it was a Friday and then everything was made out --

Q. We know the check was deposited the 21st. We have a bank statement here. A. The 21st?

Q. Yes. We also know that some of the checks were made out the 20th, which was the day before. Now your testimony is that I did not approve anything (T.144) until the night, right, the night before; is that your testimony?

A. The night of that meeting, when you came in with the audit, is when you told us to pay the bills.

Q. Do you know, Mr. Smith, that every one of these checks were certified before it was sent out?

A. It was brought up to me recently in the last deposition, yes, that that was done.

Q. Well, did you certify it?

A. Most likely, no. Most likely the bookkeeper did. Because I really don't -- I remember signing all those checks and then after I had nothing to do with, like, mailing them out or taking care of it. She took care of all that.

Q. Okay. Now, Mr. Smith, this I think is a very key point and I'd like to get this. When you say that the check was deposited in the account and you didn't know whether a weekend passed before you went to the Internal Revenue, but if a weekend had passed it was the next day that you went down to Internal Revenue --

A. Well, the dates I don't remember after eight years.

Q. Right. I understand.

A. Correct? I do remember that you came in with the audit on this particular day and on that same day you stormed out and said you didn't want to have anything to do with it any more. A half an hour to an hour later you came in and (T.145) said you wanted a list compiled of the most urgent bills. And then you made a list of the money that was owed on these food accounts and you went by them and you said okay, we'll give you this amount of money to pay those bills. What day, whether it was the 20th, 21st, 22nd -- I don't remember.

Q. But the following day you went to the Internal Revenue, or the following Monday if this happened on a Friday?

A. As far as I can remember, yes.

Q. All right. Well, the 22nd these checks were certified. So obviously the banks were open and it wasn't a Saturday or a Sunday.

A. I don't know if it was a Saturday or Sunday.

Q. Okay, Mr. Smith. One other thing. You said that at this meeting there was a big discussion about the duties that everybody was supposed to have and I ordered you to do this and I ordered so and so, and so forth?

A. Basically it was Frank and Hugo.

Q. All right. Now wasn't this meeting in which we, everybody, discussed duties of people long before November 22nd, sometime before you started going into the office around October?

A. No. Because then I wouldn't have been in on it.

Q. Well, of course you were. You were going to go into (T.146) the office, Mr. Smith. You started in that office around October, didn't you? A. Yes.

Q. So before you went into the office you wanted a discussion of what you were going to do or what you were supposed to do or what was going to go on?

A. Maybe what I was going to do in the office. But when you told everybody you have to do this and you have to do that.

Q. At the night that I was furious and walked out at one time, came back and gave you a check, I sat down and started discussing duties of people?

A. Yes. Because you wanted to cut down the payroll.

MR. WERNER: All right, Mr. Smith. That's all.

(Third-Party Plaintiff and Defendant's Exhibit 4: Bank statement 12/5/67 to 12/29/67, marked for identification.)

RE-CROSS-EXAMINATION BY MR. DINAN:

Q. Mr. Smith, I show you now what has been marked for identification as Defendant and Third-Party Plaintiff's Exhibit 4. That purports to be a bank statement for the period December 5, 1967 through December 29, 1967. Is that the account that you kept at the CBT, Connecticut Bank & Trust Company, at 904 Farmington Avenue?

(T.147) A. Yes, I guess that's the account, yes.

Q. It was called the Robert J. Smith Business Account?

A. Right. 904 Farmington Avenue, West Hartford, Connecticut.

Q. And was that the West Hartford, Connecticut bank?

A. Yes. A block from us.

MR. DINAN: I have no further questions, your Honor.

MR. NEIMAN: I have no questions, your Honor.

(Witness excused.)

MR. WERNER: If your Honor please, I would like to ask permission for me to take the stand and make a statement under oath as to my recollection of these, if that's permissible, your Honor.

THE COURT: Take the stand.

MR. WERNER: Thank you.

(T.148) HOWARD WERNER, called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: Please state your full name and address.

THE WITNESS: My name is Howard Werner and my residence address is 227 Terry Road, Hartford, Connecticut.

THE COURT: Do you want to ask yourself a question, Mr. Werner?

THE WITNESS: Well, I was hoping I could make a statement, your Honor.

THE COURT: Do you want to give some testimony under oath about this case? THE WITNESS: Yes sir, I do.

THE COURT: Go ahead and testify.

THE WITNESS: Thank you, your Honor. I originally became involved with Hugo's Continental at the request of Mr. Kerin, who indicated he wanted to help the corporation, and in return for which he would receive an option to purchase 51 per cent of the corporate stock. I attended the sessions with Mr. Bua, who was represented by an Attorney Friedli, in his negotiations for the purchase of the outstanding stock of (T.149) the corporation, which was at that time known as Camelot Restaurant, and that's the corporation that was operating the restaurant. This is about February of 1967.

An agreement was drawn up giving Mr. Bua the right to purchase all the outstanding stock of that corporation, with the exception of 25 per cent, which was owned by a stockholder in New York, and nobody knew how to get a hold of him; so Mr. Bua's attorney and the attorney for the three stockholders agreed that he would get all the stock that was there at the time and this would represent a hundred per cent of the stock, as far as anybody knew.

Mr. Alesi and Mr. Bua showed up on the scene about May of 1967 and were performers--and I might say very good ones. And it was at this time that Mr. Alesi indicated a desire to own a portion of this corporation and stay in Hartford. He purchased a home locally. He asked me for assistance as far as getting him some appliances, which I did. In any event, the point was he did move to Hartford, or to a town surrounding Hartford, and he did purchase a home and he did enter an agreement with Mr. Bua.

(T. 150) Mr. Bua was the one that negotiated with him, I had nothing to do at all with that, other than to say well, it sounds like a good idea.

He then continued working and we get into the stage of around September when Mr. Bua, who I might say, had a lot of contact with me because I was going to the restaurant eating, I was there with my wife on many occasions with friends on many occasions, with Mr. Kerin, Mr. Kaplan was there, because we wanted to support that restaurant. I mean we wanted it to be a success. So we were taking our business to this restaurant.

Mr. Bua had the habit of coming over to the table at all times that we were there to discuss business and asked for advice. And that's how I was involved in this matter; not as a matter of being able to tell him what to do.

Now, sometime in August Mr. Bua told me that they were running short of money and I discussed it with Mr. Kerin. Mr. Kerin said look, the only way we can have more money borrowed and go into this corporation is to be secured. And that's how the mortgage of Mr. Bua's house, which was owned by his wife, came into being.

Sometime in September or so Mr. Bua and Mr. (T.151) Alesi, and with some participation with Mr. Smith, determined that they were going to run a nightclub. And I advised very strongly against it because in my experience in this area those nightclubs always lost money.

In any event, they went on with this business with the nightclub and they lost a lot more money. And, of course, Mr. Bua was always asking whether we would put more money in. And I told him we were very reluctant, that we should know how much was owed and what kind of a business was going on.

He asked me if I knew any accountants and I said yes. And he got in touch with the accountants and he paid the accountants, as far as I know. I certainly didn't. To determine what their financial position was.

During this very time Mr. Smith, who I had spoken to and I told him, you know, what this place needs is a person with reasonable judgment to help operate it; would you be interested. He indicated that he was. And an arrangement was made with Mr. Bua's consent.

Without Mr. Bua's consent we could do nothing. He still owned the corporation. And he was there all the time. And he was signing checks. And all (T.152) the books were in his control and in his office and the book-keeping work was done by his sister.

BY THE COURT:

Q. Now, what was this group you had called: KKW?

A. Yes, sir. That's the first initials of three parties: Mr. Kerin --

Q. Now, they had an investment of what, some \$33,000 in this business?

A. It came to a total of something like \$30,000, your Honor.

Q. When did that start? What was the first payment?

A. The first obligation came about when Mr. Bua took over the corporation in somewhere around February of 1967. The corporation Camelot owed Charter Oak Bank something like \$6700. And Charter Oak demanded payment, you know, at that time. In order to give him more time to pay it, we endorsed that note at Charter Oak.

Now, then that note had to be paid off and we went to Connecticut Bank & Trust Company. I think it was at that point that we obtained the \$7,000, you know--that is, the corporation went into borrow the \$7,000 and we guaranteed that \$7,000. And this is when Mr. Kerin got that mortgage for the guarantee.

Q. Well, at the same time Hugo bought out Camelot or this 75 per cent of the outstanding stock, you acquired from (T.153) him an option on the part of his stock?

A. 51 per cent of his stock, yes, your Honor.

Q. All right. A. Yes, your Honor.

THE COURT: All right.

THE WITNESS: Now, as we are approaching this period--you know, in July and August we already felt that Mr. Bua was not a very good operator of a restaurant and we had made a mistake in getting involved with him in this thing. It went into September and October when we discussed this matter with Mr. Smith and he agreed to go into the office and see if he could straighten out matters; at least to determine what was owed. This is some-

thing we could never even determine.

Now as far as the taxes are concerned, your Honor, the claim of the government is that I knew about the taxes or the unpaid taxes for the quarter ending September 30th, 1967, for the quarter ending December 31st, 1967, and the first two quarters in 1968.

Now, I didn't know the amount of unpaid taxes other than to know in November--and I think it was the 22nd or 21st or 20th, in that area--when Mr. Bua told us that taxes weren't paid, that he was (T.154) not a citizen, that he would be deported, etc., etc. This is why we reluctantly agreed to make monies available to the corporation so that those taxes could be paid. That was the purpose of the purchase of the accounts receivables.

We had no illusions that these were valuable to any extent. It was simply the only security that the corporation had at the time.

Now, the best we could have known at that time--and I cannot remember that accountant's report as to the figures in it; unfortunately, I don't have a copy of it--but the best we could have known was that the third quarter was not paid, and we couldn't have known the fourth quarter wasn't paid because that's due in January of the following year.

What I want to point out, after this occurrence on November 22nd--and I disagree with Mr. Smith's testimony that I sat there and approved the payment of these bills bill by bill. I had no knowledge that these checks had been made out until Mr. Dinan showed them to me sometime during one of the depositions. I had no access to any of the books or any of that information.

Now, after that occurrence in November I was, (T.155) in my mind, absolutely through with this business. I wanted no further part of it. It was taking my time. It was aggravating me no end, and so on and so forth.

I do recollect Mr. Smith's call around the beginning of January telling me that he could see no future in it. And I told him, well, there is no future in it and that was the end of it. I never had any more doings with Hugo's Continental thereafter.

Now the government claims that I also owed the first quarter and the second quarter of 1968. I wasn't anywhere near the place at the time. I had no contact with Mr. Bua. I did have contact with Mr. Bua's attorney.

Now there were monies owed to us and we were looking to see the best way we could get some kind of payment back on that \$30,000. Now, either--my recollection is that Mr. Bua's attorney called me and asked me if Mr. Kerin would be interested in releasing the option that he had on that corporation. And I told him, well, I think he would, but it would seem to me that the accounts would have to be straightened out relative to what Mr. Bua and the corporation owed us. And he was agreeable to that.

(T.156) And the fact of the matter is that an agreement was entered into by Mr. Bua and it says Hugo Bua, President. I'm sure it had the corporation on top of it; myself, Mr. Kerin and Mr. Kaplan, in which we as a group give up any right or option we have to purchase the stock of that corporation in return for Mr. Bua's and the corporation's agreement to pay that \$30,000 in various stages. Now, this was dated March 15th, 1968. That's my only contact and that had nothing to do with the operation of Hugo's Continental at that time. Now I have this agreement, if counsel care to see it.

In furtherance of any payment, your Honor, I might say that in 1969 there was a foreclosure of the house on which there was a mortgage to Mr. Kerin and as a result of a foreclosure by sale Mr. Kerin got--I say Mr. Kerin--KKW received \$7,000 as part of the repayment of this \$30,000. That's the only thing we ever received from them. Would you like to see this agreement, your Honor, on this?

BY THE COURT:

Q. Well, he already owed you that money, didn't he? What was the consideration for your release of the option? (T.157) What else was he giving you?

A. He was just stating that he did owe us the \$30,000 and that he agreed to pay it in a definite method, sir. Q. I see. Okay.

A. So my main point here really is that that money that was paid for the accounts receivables was motivated by our desire--Mr. Kerin's, myself, Mr. Kaplan's--that Mr. Bua not be deported, because he did have a wife and family here. And I certainly would not under any circumstances have approved payment of any bills until those taxes had been paid.

So these checks that amount to \$11,000 something dollars had nothing to do--I had not approved those payments, in spite of what Mr. Smith had said.

Q. What was the basis for taking a mortgage on his sister's house?

A. His wife's house, your Honor. Q. His wife's house, yes.

A. Well, the house he was living in was in his wife's name. She, incidentally, also worked at the restaurant and she worked very hard. Q. Okay.

A. So she, you know, since the house was in her name, she agreed to offer that as security. THE COURT: All right.

(T.158) CROSS-EXAMINATION BY MR. DINAN:

Q. Mr. Werner, if you saw a copy of the audit that was prepared and was submitted to you prior to your meeting in November of 1967, would you recognize it?

A. I might, Mr. Dinan.

(Third-Party Plaintiff and Defendant's Exhibit 5: Audit report of 10/31/67, marked for identification.)

Q. (By Mr. Dinan) Mr. Werner, I show you what has been marked for identification as Third-Party Plaintiff and Defendant's Exhibit 5. That purports to be a partial statement of assets and liabilities of Hugo's Continental, Incorporated as of October 31, 1967. Do you recognize that as being the audit report?

A. Well, Mr. Dinan, before I look it over let me say that since it's dated October 31st I would assume that this would have been gotten to us sometime after October 31st, which would be about that time.

THE COURT: The question is do you recognize it as the audit report that you had before you in November of '67.

THE WITNESS: I don't recognize it as such, your Honor. But that's not to say that's not the one.

(T.159) THE COURT: What's that?

THE WITNESS: I don't recognize it as such, but I don't say that it was not the one. THE COURT: All right.

Q. (By Mr. Dinan) Well, you don't recall having seen this before?

A. I think you showed it to me at one time during the depositions. I'm willing to assume that this was the report that was handed to me, Mr. Dinan, although I can't recognize it.

Q. Well, if you assume that, then on the first page of that there's a listing of various income tax liabilities for Hugo's Continental Restaurant, is there not? A. Yes, there is.

Q. Don't they state that those liabilities commence with the first quarter of 1967?

A. No, I think it says second quarter, Mr. Dinan.

Q. All right. The second quarter is for \$1300? A. Yes, sir.

Q. Then isn't there a liability for the third quarter? A. Yes.

Q. What is that amount?

A. \$5,773.

Q. Is there any further liability on that exhibit?

A. It says federal withholding, month of October, \$2,043.

(T.160) (Third-Party Plaintiff and Defendant's Exhibit 6: Four notes, marked for identification.)

BY MR. DINAN:

Q. Mr. Werner, I show you what has been marked for identification as Defendant and Third-Party Plaintiff's Exhibit 6 consisting of four pages. Would you look at those and tell me if you recognize them?

A. Well, I certainly recognize my signature on them on the back of these notes, Mr. Dinan.

Q. And those are, in fact, the notes which you endorsed on behalf of either Camelot or Hugo's Continental Restaurant which constituted your investment,

KKW's investment in that enterprise; is that correct?

A. That is correct, Mr. Dinan.

Q. And those notes total approximately \$30,000?

A. It's about \$28,500, Mr. Dinan. I'm just not sure whether one of these notes, the proceeds of which might have been used to pay a previous smaller note--You see what I mean? But certainly these are the notes that were signed by either Camelot Restaurant or Hugo's Continental and which we endorsed on the back, thereby providing funds for the corporation.

Q. Would you take a look at that Exhibit 6 for identification, please, and tell me the date of the first note on which your signature appears.

(T.161) A. It looks like March 6, 1967, Mr. Dinan.

Q. Now, Mr. Werner, it is correct, is it not, that beginning in March of 1967 you began to have an interest in the management of the Hugo's Continental Restaurant, or what was then known as Camelot; did you not?

A. No, I did not, Mr. Dinan.

Q. Well, is it not true that beginning in September of 1967 you did, even if gratuitously, advise Mr. Hugo Bua as to the financial affairs of Hugo's Continental Restaurant?

A. I wonder if you could clarify that, Mr. Dinan. Advise him?

Q. I kind of like the question the way it is.

A. Well, I kept telling Mr. Bua when he would come and ask for money that unless his business was making money that he ought to stop and get out of business, yes.

Q. All right. Now, in fact we've heard testimony here from Mr. Smith previously about a meeting that occurred in November, and you've admitted attending that meeting. You became emotionally upset at that meeting, did you not?

A. Well, Mr. Smith has described it as a meeting. I do remember that I had gotten--I was furious to see the amount of monies that this corporation had owed. I mean I had no idea it was to that extent because here it was in August we had provided \$7,000 of fresh money and, you know, this is October 31st, a month and a half later, and here there (T.162) are all kinds of obligations.

And I went in--I remember going into the Continental, and I believe it was up in the office where Mr. Bua was there, Mr. Smith was there, I assume Mr. Alesi, and certainly the sister was there. And maybe there were others then. In any event, I said to them this is just outrageous that people can permit a corporation to this badly, and that, as far as we were concerned, we were through with providing any further monies for this corporation.

Q. You did, however, instruct various people to assume various responsibilities at that meeting, did you not?

A. No, I did not, Mr. Dinan. I tried to correct Mr. Smith, as far as my recollection is concerned. The meeting, as far as various duties were concerned, was at the time Mr. Smith was going to go into the office so that he could determine just what the financial status of this corporation was and try to run it on an organized basis; that people wouldn't be getting bounced checks as they were getting and all the problems that were going on at the time.

Now at that time we all had a meeting. I mean it wasn't as if I'm sitting there giving these instructions. Everybody was talking. And we came up -- we came to the conclusion -- we, everybody that was there -- that Mr. Bua (T. 163) should be the chef and save money there; that Mr. Alesi should handle the lounge, I believe, music, some kind of duties; and there was Theresa Bua there doing the bookkeeping, so nobody assigned her duties; and Mr. Smith was to go into the office to try to assist in making some determination of what this corporation actually owed, as well as letting the suppliers know that there was an even hand at the keel, Mr. Smith's, and that, you know, if he made a promise it would be kept--is something that was not being done prior thereto and that's why all the

suppliers were upset.

It's a classic case of a business going bad and promises being made and suppliers and creditors getting upset because promises weren't kept and so on and so forth. So we hoped that by this procedure we could keep this restaurant going in the proper way and have it make money, or at least meet it's bills and carry through to the busiest time of the year, which was approaching, Christmas.

Q Well, at that time, when you saw that audit report and noted the outstanding tax liability of eight some odd thousand dollars, you state you then determined that you would purchase the accounts receivable in order to put the money into the corporation to pay those taxes, is that correct?

A Yes, well what happened was this: I went in and announced that we were through with any further financial (T. 164) assistance to the corporation. And I went back to Mr. Kerin's or Mr. Kaplan's office, which was across the street at the time, and Mr. Bua came over to see Mr. Kerin. Mr. Kerin then had a meeting with me. Whether I was there -- or Mr. Bua was there or not, I don't recall.

Mr. Kerin and Mr. Kaplan and I discussed that Mr. Bua was going to be deported because he hadn't paid taxes. And whether it was Mr. Bua's statement to that effect or this audit, I don't remember. But that was the discussion. And Mr. Kerin was absolutely against just signing another note to the bank. And I said, well, the only thing that I know that they have of any value are the accounts receivables. So, I went back over -- he said, well, let's get that, at least, and let's finish this off and get out of this thing and finish business, and we've lost our money. I said OK. And I went over there and I told them that we had decided to buy the accounts receivable and I asked Miss Bua to draw up a list so that we would know what they accounts were, that we would pay ten per cent less of what the total of the accounts were. And that's what we did.

Q By Mr. Dinan.) Do you disagree that at that same time you were also presented with a list of creditors of the company? A Absolutely.

Q You never received that list?

(T. 165) A Let me say this, Mr. Dinan: All along Mr. Smith would keep me informed that so and so was owed money, that this man came in and said that; yes.

Q Why would he do that? Why would he keep you informed?

A Well, because I would come there -- now I'm talking about October or so, in that period of time; October and the beginning of November. We were attempting to straighten out this business, to have the creditors know that they were going to get paid if the business succeeded, that attempts were being made to straighten out the business. And I would come there -- not every night as has been testified, I think Mr. Smith said, or every other night -- but on my way home from my office I would stop in about five, five-thirty and I would discuss with Bob Smith what had happened that day or the day before, depending upon when I was there before, and we would try to work something out so that it would sound sensible and reasonable to the creditors so that the business would not be closed. Many of them did threaten to close it.

Q Did you, at the time you saw the audit, compute the amount of tax that was outstanding, the amount owed to the government by Hugo's Continental Restaurant?

A No, I did not, Mr. Dinan, because there were -- Bua at that time, and maybe Alesi, I don't remember, said no, (T. 166) that's wrong, I know we paid some of those taxes, and so forth. I did not know for a fact what taxes were unpaid. That's why I requested Mr. Smith to go with Mr. Bua the next day to the Internal Revenue to determine what taxes were owed. Because that was our main concern at this point. You know, that would be a felony and he wasn't a citizen. He would be deport-

ed, I mean.

THE COURT: What made you think that?

THE WITNESS: This is my understanding and this is what he said to us, your Honor.

THE COURT: You got upset about it?

THE WITNESS: Well, yes sir, because -- not because of Mr. Bua. We had no love for Mr. Bua at this point. But he did have a wife who seemed like a very decent person, and four children.

BY THE COURT: Q She was an American citizen, wasn't she?

A I don't believe she was. I think she was a German. I don't believe she was an American citizen.

Q You really didn't get into the question of whether there was any risk of his being deported?

A I never called up the Immigration Department, sir.

Q So you weren't really too concerned about that?

A Yes, we were sir.

Q (T. 167) Well, you say that was the motivating factor, to relieve him of anxiety or the risk of deportation? A Yes, sir.

Q That you made the loan --? A. The purchase of the accounts receivables. Q That's what you are telling the Court? A Yes, sir.

Q And you made no inquiry at all to find out whether there was any sort of basis for his fear or not?

A Well, your Honor, it was my understanding at the time that if a person who was not a citizen committed a felony --

Q But you don't know anything about it. You don't know whether she was a citizen or not?

A No, we knew he was not a citizen.

Q. She, his wife? A No, I'm saying that the threat was that Mr. Bua would be deported.

Q Yes. But if he was married to an American citizen, he wouldn't be deported, would he?

A Well, to our knowledge, he wasn't an American citizen.

Q She wasn't? A She was not, sir. I believe she came from Germany. Q You don't know? A Well, it's my impression at the time, your Honor. (T. 168)

Q All right. Now, when you put up money so that he could buy into this business, buy 75 per cent of the stock of Camelot, did you have a financial statement of Camelot?

A Yes. There were statements given to Mr. Bua by the attorney for the sellers that I had access to, yes sir. Q Yes, all right.

A And it was heavily in debt, your Honor. When I say heavily in debt, my recollection is that maybe it owed about 20 - 25 thousand dollars at the time. THE COURT: OK.

BY MR. DINAN:

Q. Is it your testimony that you did, in fact, inform Mr. Smith that taxes were due and owing after that November meeting?

A I believe that at that November day I walked in and said: Look, there's too much money, we're through with this. And then subsequently Mr. Bua came over to discuss with Mr. Kerin the fact -- now he was in tears, and so on and so forth; and Mr. Kerin and Mr. Kaplan and I discussed, well, this one last time, but we wanted to purchase the accounts receivables, at least have some kind of security for the loan.

That (SIC) I went back and said: Look, this money is for Hugo to pay his taxes because if he doesn't pay them he's going to be deported and, you know, and we want you to go with him and determine what is owed on these taxes and pay it. (T. 169) That's what the money is for,

Q You specifically told Mr. Smith that? A Absolutely.

Q. Now, at this meeting in November was Mr. Alesi also present?

A. I believe he was, Mr. Dinan.

Q. Can you be sure of that? Do you have a specific recollection of his presence at that meeting?

A. I have a specific recollection of the entire emotional chapter here on that day in which we told them that we would no longer go to the bank and borrow money so that they could continue in business because we didn't think it made any sense. It was just too much money owed here. And I do remember Mr. Alesi there at the time. Now, if you're asking me was he there when I came back and told him we would buy the accounts receivable, all I can tell you is I assume he was because it was a short period of time.

Q. Do you recall asking Mr. Alesi to go anywhere with Mr. Bua to inquire about the precise amount of the tax liability?

A. No, Mr. Dinan. As Mr. Smith testified, we didn't trust Mr. Alesi's word, either.

Q. All right. When do you contend that you no longer had any association with Hugo's Continental Restaurant? (T.170) What point in time?

A. I think it was that night, Mr. Dinan.

Q. That night, November?

A. Yes. That I had made the decision that I wasn't going to spend any more time in this or, you know, I just wanted out of the picture. And as fast and quickly as I could get out of any involvement with Continental, that's what I wanted to do.

Q. But your loan and your mortgage --

THE COURT: Getting out of it involved a salvage operation, didn't it? You would have to keep something going to get out of it.

THE WITNESS: We hoped that the coming Christmas season, your Honor, would either make him or break him. That was the point.

THE COURT: All right.

THE WITNESS: If they could make enough money Christmas they could continue in operation.

Q. (By Mr. Dinan) When was the mortgage negotiated on Mr. Bua's wife's home?

A. In August of 1967. Q. '67? A. Yes.

MR. DINAN: I have no further questions, your Honor.

(T.171) THE COURT: All right.

(Witness excused.)

THE COURT: Is that it now, except for the witness tomorrow?

MR. DINAN: I hope Mr. Alesi is here, the other party, your Honor; and the one witness. If Mr. Werner wants to rest now, then it will just be the government's case tomorrow and Mr. Neiman's.

THE COURT: It will just be the government witness and Mr. Alesi. Is he here?

MR. NEIMAN: No, your Honor. I spoke to Mr. Alesi last night. He said he would come this morning. ... I might say, your Honor, we have his deposition here. I don't know whether it would be necessary to have him in person. And I hope he does come later today or tomorrow. I will try to get in touch with him.

THE COURT: Then we will suspend at this time until tomorrow morning at ten o'clock.

(Whereupon, court was adjourned.)

* * *

(T.177) HUGO BUA, called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: Will you state your full name and address for the record, please.

THE WITNESS: Hugo Bua.

THE COURT: How do you spell your last name?

THE WITNESS: B-u-a. 684 Windmill Avenue, North Babylon, Long Island, New York.

DIRECT EXAMINATION BY MR. WERNER:

* * *

Q. Now, Mr. Bua, you are the same Hugo Bua that in 1967 and perhaps in '66 worked at the Camelot Restaurant on Farmington Avenue in West Hartford? A. I should think so.

Q. Did you know a Mr. William Kerin at that time? A. Yes, very well.

Q. And how did you happen to know him?

A. He used to be one of my customers prior to Camelot at La Scala Restaurant.

* * *

(T.178) Q. (By Mr. Werner) Now, the Camelot Restaurant was located across the street from Mr. Kerin's office, was it not? A. Correct.

Q. And you had seen him on various occasions coming into the Camelot, is that how you knew he was there? A. No, sir.

Q. How did you know that he was across the street, Mr. Bua?

A. I asked Portofino Restaurant--where prior I worked, and he apparently was the insurance man for it--where Mr. Kerin's office was. And they told me.

Q. And you wanted to see Mr. Kerin at that time? A. Correct.

Q. Could you tell us why you wanted to see Mr. Kerin?

A. To borrow \$5,000 on a second mortgage on my house.

Q. And did you explain to him the purpose of this, Mr. Bua? A. Yes.

Q. What was the purpose of this?

A. The purpose was to go in business with three other gentlemen at the time that owned the Camelot Restaurant.

Q. And the Camelot Restaurant was owned by three people at the time you worked for it? A. Correct.

(T.179) Q. And this was in about 1966? A. Late.

Q. Late '66 and early '67? A. Yes.

Q. All right. And what was Mr. Kerin's reaction to your discussion?

A. He said why would you want to go partners with these people? You see that you have been working practically ten to eleven weeks and you are all in the checks, you cannot cash them, the place is going bankrupt and it's no good for you to invest that kind of money. I have it. I like to go in business with you because I like the way you can do things in the restaurant. And I had a great deal of respect for Mr. Kerin. And I accept what he said.

Q. What happened then, Mr. Bua?

A. As the time went by, the place didn't seem like it wanted to fold down because I increase the business to a 90 per cent increase. And they didn't want to sell the place. They couldn't become bankrupt because the money was coming in, in other words. I was very eager to go in business and to accept the promise of Mr. Kerin that we came to an agreement, between the money that Camelot owed me at the time and some money--exactly I don't recall, but I believe it's \$7500, (T.180) which Bill Kerin gave us. And then you came in in the picture as an attorney. And we took over the place.

Q. All right. Now, when was the first time you met me, Mr. Bua? If you remember?

A. I could not be very correct, but I do believe the first time I met you was when we start negotiating for the Camelot.

* * *

Q. Now, you had your own attorney at the time, Mr. Bua, did you not?

A. Yes I did.

Q. And you and your attorney negotiated with the then owners of the Camelot and their attorney for the purchase of the stock owned by those three individuals?

A. No, sir. That is not true.

Q. Well, how did it come about?

A. My lawyer was only negotiating to make a contract between me and Bill Kerin; where then you came in the picture as another owner, which I didn't know. I thought you were only another lawyer.

Q. Well, Mr. Bua, I was representing Mr. Kerin, was I not?

A. That's what I thought you were.

Q. Yes. And you had your lawyer negotiating with Mr. Nichols, (T.181) who was attorney for the owner?

A. No, sir. My lawyer never negotiated with Mr. Nichols. You were the one that negotiated with Mr. Nichols.

Q. Who ended up purchasing the stock, Mr. Bua?

A. You did. For me.

Q. I purchased the stock?

A. Yes. You did, for me.

Q. In whose name did the stock go, Mr. Bua?

A. The stock went in my name. You had an option of 51 per cent in two years to buy the place.

Q. Mr. Kerin had an option, did he not?

A. Well, but you also were a partner with Mr. Kerin, besides representing him.

Q. That is correct, Mr. Bua, in other matters I was Mr. Kerin's partner; correct.

A. In the restaurant also.

Q. But the option was to Mr. Kerin, personally?

A. No, sir. The option was for Mr. Kerin, Mr. Werner and Bernie Kaplan for 51 per cent.

THE COURT: Well, is this significant, Mr. Werner? We already have the testimony of Mr. Kerin that you three acted as joint ventures or as partners here. The form of the agreement wouldn't impeach his credibility. Mr. Kerin has already testified. (T.182)

MR. WERNER: Yes, your Honor.

THE COURT: I understand you do not deny that the three of you were engaged in this venture together, so far as the risk of the loan was concerned?

MR. WERNER: That is correct, your Honor.

THE COURT: Right? MR. WERNER: Yes, sir. THE COURT: All right.

MR. WERNER: I just want to make it clear at this point, if I may, that it was Mr. Bua with his attorney who negotiated for the purchase of that sale with the Camelot Restaurant.

THE COURT: Well, there seems to be a dispute about that.

MR. WERNER: Yes, sir. THE COURT: Yes.

BY MR. WERNER:

Q. Mr. Bua, did you not sign an agreement with the owners of the Camelot Restaurant to purchase their stock?

A. Mr. Werner, if there are any agreements such as that it is beyond my mind because I do not remember. I don't recall it.

Q. If I showed you an agreement that you signed do (T.183) you think you might refresh your recollection?

A. Well, you can show me many agreements. But I can also say that you made me sign a lot of things without my lawyer, Mr. Werner; so.

Q. I made you sign, Mr. Bua? A. Absolutely.

Q. Well, Mr. Bua, I would like to show you that agreement to see if it refreshes your recollection.

A. Mr. Werner, there are a lot of papers that were signed at the time and really, to be very very honest with you and myself, I don't even recall this paper. I'm not doubting or disputing the fact that I maybe even signed it. I don't recall this paper.

THE COURT: Look at the end and see if that is your signature.

THE WITNESS: I am trying to look where is my signature and I can't find it. There were so many papers, I don't remember. I don't see no signature here.

Q. (By Mr. Werner) Look at this one and see if it is the same as that.

MR. DINAN: May it please the Court, is the document that was just handed to the witness the same document that the witness examined?

MR. WERNER: No. I'm asking him to examine (T.184) this new one.

THE COURT: He is showing him another one.

MR. WERNER: Your Honor, it is the same one. It is the original with the signatures. THE COURT: I see.

MR. WERNER: I happened to hand him a copy of it.

A. Yes, this is my signature.

Q. And that agreement provides for you to purchase the stock of the three stockholders of the Camelot Restaurant, did it not?

A. Apparently it did. But, Mr. Werner, I'd like to interject a few words into this, if I may.

MR. WERNER: There is no question pending, your Honor.

THE COURT: I'll allow him to explain.

MR. WERNER: All right. THE COURT: Go ahead.

A. I did sign a lot of papers. I don't even know how many papers I signed. I wanted to go into business very much. I felt that I could do a good job and I wanted to go in business. To me every paper they put in front of me, at the time I trusted faithfully Mr. Kerin, and then knowing Mr. Werner, and to me there was no such a thing that anybody was (T.185) going to put anything over me. As far as I knew, I will sign any paper. In fact, to the matter that my prior lawyer, Gary Friedli, my next door neighbor at the time, which was representing me, he walked out on the deal we made with Mr. Werner.

* * *

A. He walked out because he did not like the agreement, which Mr. Werner at the time wrote; the kind of way the shares were going to be dispersed and so forth. And still I was silly enough at this point I can say to want to go still in business. And my lawyer say you can do anything you want, but I don't want to have this on my conscience; I want you to release me and sign me a paper. And he wrote the paper saying that anything that will happen in the future it will not be his fault, so forth and so on; and he walked out of the case. And I had no lawyer then.

THE COURT: How much of your own money went into this deal?

THE WITNESS: My own money? I don't know exactly. Over ten weeks of salary at \$300 a week, which I could not cash. And then also \$6500, I believe --I'm not quite sure again--that I took a second mortgage on my house, which I paid; and Mr. Werner co-signed the check for me because otherwise, Mr. Kerin, your friend, would not give me the money, if you recall. Apparently, I paid because when I sold my house I had to pay those money.

BY MR. WERNER:

Q. In 1969, Mr. Bua, your house was foreclosed? A. Exactly.

Q. And Mr. Kerin had a mortgage on it?

THE COURT: 6500, was it, or 5,000?

THE WITNESS: 69.

MR. WERNER: 6900, your Honor.

THE WITNESS: Yes. As a matter of fact, the check was endorsed by Mr. Werner and also Mr. Alesi and my wife and me.

Q. (By Mr. Werner) The note, Mr. Bua.

A. The note on the second mortgage of my house which Connecticut Bank gave us the money.

Q. I will get to that, Mr. Bua.

A. That was my money.

Q. But that money was paid as a result of a foreclosure by another party who had a mortgage on your house, is that not so; a Mr. Reilnick?

THE COURT: The doesn't matter, I guess.

(T.187) A. I don't know.

MR. WERNER: I'm trying to point out, your Honor, we did not foreclose his house, which I think is the implication.

THE WITNESS: No. The house, it wasn't foreclosed by you, no. I did not say that.

MR. WERNER: Your Honor, I would like to introduce this. I will show the attorneys.

THE COURT: Mark it as an exhibit.

THE CLERK: Plaintiff's Exhibit 7.

THE COURT: That's the agreement for purchase of Camelot?

MR. WERNER: That is correct, for the shares of Camelot, your Honor.

THE COURT: All right.

(Plaintiff's Exhibit 7: Agreement, purchase of Camelot, marked full exhibit.)

THE COURT: Anything further of this witness?

MR. WERNER: Oh yes, your Honor.

THE COURT: Well, let's move along. MR. WERNER: All right.

Q. (By Mr. Werner) Now, Mr. Bua, you then went into the operation of the Camelot Restaurant which you subsequently changed to Hugo's Continental, Inc., the name of that corporation, is that correct?

(T.188) A. Yes. I did change it, but the idea, as a matter of fact, of "Hugo's Continental" came in the office with Mr. Kerin and you present. As a matter of fact, you suggested it.

THE COURT: To change the name to Hugo's?

A. Wasn't that so? I think so.

Q. You wanted to change the name to Hugo's Continental Restaurant at a certain point, did you not?

A. I wanted to change the name of Camelot, period. Not to Hugo's Continental. You people give the suggestion of Hugo's Continental.

Q. In any event, the name of the corporation was changed? A. Yes.

Q. And you had made an emblem with forks and spoons, and so forth?

A. Exactly. Q. You had made those?

A. Yes; that I made, after we came up with the name.

Q. Now you had to go before the Liquor Control Commission in order to renew the license or make sure the license was going to be in effect, did you not, Mr. Bua?

A. I never went before the Liquor Commission.

Q. Didn't you have an attorney go to the Liquor Control Commission?

(T.189) A. I had the attorney to go to file the procedure papers where in every business it is done, in the restaurant business.

Q. Mr. Bua, I'm just trying to point out that you had an attorney representing you in the corporate interest at this time.

A. Yes, after the deal was made with you and we carry on the deal--I did not have a lawyer. You were the lawyer representing you and Mr. Kerin and me.

Q. And you?

A. And I have said that I had no lawyer to close the deal.

Q. Well, Mr. Bua, wasn't Mr. Friedli sitting with you at the time that these papers were signed at the Camelot Restaurant?

A. No. Before I signed he wanted me to sign the paper that he wants nothing to do. He walked out. You remember.

Q. I understand, Mr. Bua. But he was there representing your interest at the time. He didn't --

MR. DINAN: Objection, your Honor. Counsel is arguing with his own witness.

THE COURT: Sustained.

Q. You do recall Mr. Friedli sitting with you at the time this paper was gone over and eventually signed by you?

A. Mr. Friedli was there. Before I signed the paper, (T.190) he left. He let me sign a release of him being my attorney and then he left. And then I said to you--I remember very well, Mr. Werner--I said to you don't worry about it, I trust you people, I'll sign it. That's exactly what I say, after my lawyer walked out.

Q. You wanted to own the stock, didn't you, Mr. Bua?

A. You repeat the question, I'll answer it.

Q. I say you wanted to own the stock of that corporation, to go into business?

A. Very badly, apparently. This is why I made this foolish thing that I did.

Q. Well, all right. Let's go on. Now, this is somewhere -- Do you have a date on that agreement?

MR. DINAN: March 4th, 1967.

Q. This was during March, if you recall --

MR. DINAN: Incidentally, your Honor, I have no objection to this Exhibit 7 being introduced into evidence. MR. WERNER: Thank you.

THE COURT: It is already in, Exhibit 7 is in.

Q. (By Mr. Werner) Mr. Bua, at that time you opened up a checking account when you took over this corporation, did you not?

(T.191) A. Yes, I did.

Q. And who was entitled to sign those checks?

A. I was.

Q. Anybody else?

A. At the time, no. There was nobody else to sign.

Q. And you carried on the business by paying the bills that came due, by paying your rent, etc., etc., all expenses of the corporate business?

A. When you say my rent, which rent are you talking about?

Q. The corporation had a rent to pay? A. Yes, right.

Q. To lease the building? A. Yes.

Q. So you continued this procedure by running the restaurant, taking in the money, depositing it, paying bills? A. Correct.

Q. And you had a part time accountant at that time, did you not, Mr. Bua?

A. Yes, I did.

Q. And he was taking care of all the forms that were required for the state and federal government, and so on and so forth? A. Yes.

Q. All right.

(T.192) A. Well, part time bookkeeper. No accountant. I'm sorry.

Q. Part time bookkeeper? A. Bookkeeper, yes.

Q. But he was taking care of your books and the check books were always in your control, Mr. Bua? A. Yes, they were at the time.

Q. And those checkbooks were in your control all during the time that you operated this restaurant, is that correct?

A. I will not say that is correct, no. Even though they were at one point, they were in my control to a point, Mr. Werner, you had a great deal of influence on the whole corporation itself.

Q. How did I get that influence, Mr. Bua?

A. Well, I don't really know. I guess because you felt that you're going to be a part owner of a very good growing business, you wanted to control. You were there every day, almost, every afternoon after your office, I guess.

Q. After my office in the afternoon?

A. I mean whatever, whenever you finish your office at five, four-thirty. I don't really recall it.

Q. Well, if you don't recall it let's stick to what you do recall, Mr. Bua.

A. I do recall you were there every day, after lunch. (T.193) I don't know what time.

Q. From when, Mr. Bua?

A. Four-thirty, five; I don't recall.

Q. No, I mean what period of time, Mr. Bua?

A. Well, I will not say this took place at the very beginning, no. But I think after a while you took liking the place a lot, I guess. You used to come there an awful lot.

Q. Well, Mr. Bua, it is true that I ran up some sizable bills at Hugo's Continental for purchases of food and liquor and so forth, did I not?

A. Oh, yes. You paid, as a matter of fact, when we were really in bad trouble. You ran up a bill over a thousand dollars and I had to beg you to pay the bill, because I needed the money badly to pay our taxes.

Q. All right. Let's get to that point, Mr. Bua. There came a time in November of 1967 at which point you were in dire need--that is, the corporation was in dire need of money to pay a lot of bills, including the taxes owed to the government, is that correct?

A. In which time are you talking about? Q. November of 1967.

A. Well, actually, we are going through a time right now--again it's been a long time--I don't recall dates. I don't recall too much. I do recall, though, the circumstances (T.194) of the place. We took over the corporation which already was in trouble with Internal Revenue. Because the checks of Mr. Varros and whatever these three names are paid to Internal Revenue, they bounced, once I was in control of the corporation and president assuming liability. And we had to pay for it, the corporation. So, actually, the beginning of being in trouble with Internal Revenue always existed. So if you give me a date which time was, I don't recall because we were always in trouble with Internal Revenue from the very first day I walked in the place.

Q. Well, Mr. Bua, there were monies that went through the accounts, did they not? I mean you were bringing in money into the corporation? You were doing business?

A. Yes. But also we accumulate an accounts receivable, which you people as backers never really wanted to understand if we accumulated \$20,000 accounts receivable we need that much to back it up. That's why I needed you people. I didn't need you people otherwise.

Q. That's right. You needed us because --

A. To back up like you wanted to back me up, as a partner.

Q. Well, Mr. Bua, what I'm trying to get to is that you knew that you owed the Internal Revenue Services taxes (T.195) for withholding?

A. Yes, sir. All the time I said to you, from the very first time I walked in the place.

Q. And you had control of the monies coming into the corporation at all times?

A. I will not say at all times.

Q. Well, when didn't you have it, Mr. Bua?

A. For example, the time that you came in the office and say if it wasn't for your wife and your four children I wouldn't let you report it because you're not a citizen and you owe Internal Revenue money and they will deport you. Which you were lying at the time.

Q. I said that to you? A. Yes, you did, sir.

THE COURT: May I have that repeated, please? (Answer read back.)

THE COURT: What was this about deportation? Why are you subject to deportation? Is your wife an American citizen?

THE WITNESS: No. But Mr. Werner at the time claimed, I guess--I don't know, maybe his skimmy was as usual--he claimed that if I will not pay those taxes and I will close Hugo's Continental, the Internal Revenue will deport me to Italy. Now, the reason why I say that was a lie is (T.196) because I did not fraud Internal Revenue. I filed my papers correctly. I filed exactly the amount of money that I did owe to Internal Revenue. But I didn't have the money at the time. But the papers were good. I did not bluff the papers. So how can Internal Revenue ever deport me for that? That's the reason why I say he was trying to scare me. The reason why he tried to scare me at the time was to take me away from control of the cash, where Mr. Bob Smith at the time take the place.

Now, the money that was given to Hugo's Continental was borrowing money and they took the accounts receivable inventory. They give eleven thousand and change, I don't know, to pay Internal Revenue. And then I supposed to submit and give up, sign checks and so forth when Mr. Bob Smith came to the picture, guided by Mr. Werner. The Internal Revenue, though, was never paid because there were other bills to be paid. Apparently Mr. Werner did not really want to close Hugo's Continental. He wanted to go on with Hugo's Continental and allow the place maybe one day to make money enough to pay

Internal Revenue. But I did give up my signature. It was to a (T.197) point before that, as a matter of fact, that I recall very well that me, Mr. Alesi, I'm not quite sure whether it was Mr. Bob Smith, but I'm for sure --I remember Mr. Alesi's brother-in-law Ross--I forgot his last name--that prior to this we took all the liquor out of the cellar and fill up our cars because we were closing the place. We were going to close. And then Mr. Werner came in.

MR. WERNER: Excuse me, Mr. Bua.

THE COURT: Go ahead, finish. THE WITNESS: That's a fact.

MR. WERNER: I'm just trying to understand what was just said, your Honor. THE COURT: Had you finished?

THE WITNESS: Then Mr. Werner came in and he give us eleven some thousand dollars. He took all the accounts receivable, which he will take 10 per cent of it, and get paid back eventually from the corporation this eleven some thousand dollars. Those money were supposed to be paid to Internal Revenue and that money never did went to Internal Revenue because I believe at the time Mr. Werner was much too worried about his friend Röss, the liquor company which we did a lot of business from that wouldn't get paid. So we had to pay Mr. Ross' (T.198) liquor company. The Internal Revenue never did get paid. That was the time that I really got upset and blew up, crying. I think it was the only time in my life as a grownup that I cried as a baby.

BY MR. WERNER:

Q. Mr. Bua, there has been testimony here to the effect that around this period of November I walked in with an accountant's report indicating that Hugo's Continental Restaurant was very heavily in debt, including owing taxes to the government. Do you recall that incident?

A. Mr. Werner, you knew that all along. We took over Camelot very heavily in debt.

Q. No, Mr. Bua.

A. That's because you didn't want to pay off everybody the way you were supposed to be a backer.

Q. Mr. Bua, I'm trying to get to this one point in November.

A. Yes. But why you only looking for November and not looking from the very beginning, Mr. Werner?

Q. Mr. Bua, I'm trying to ask you a question. Please let me finish asking the question. A. Certainly.

Q. At a point in November we received a report from accountants that were paid by the corporation to come up with (T.199) a report as to what was owed by the corporation, is that correct? Do you remember that?

A. I recall that you were sending to accountant I believe, we take inventory on a Sunday, because the place was closed. We went through inventories, everything.

Q. To determine how much was owed by the corporation?

A. And determine how much was owed by the corporation, I suppose. Which I never find out because I never got the details, is percentage food cost, is how much it cost those fixtures, or how much is my payroll, or what is our goal, or what we need to break even point. I never got this.

Q. Well, why didn't you find out those things?

A. Because you didn't let me find out too many things, I guess.

Q. I came over with an accountant's report to show you and Mr. Smith and Mr. Alesi, did I not?

A. Whatever you come up at the time.

Q. No, no. I'm asking what your recollection is, Mr. Bua.

A. My recollection was that I never know whether I was coming or going.

Q. And you don't remember my coming in with an accountant's report sometime in November?

A. Yes. That you thought the place was very heavily in debt.

(T.200) Q. And I had an accountant's report to indicate that? A. Naturally.

Q. And also on that accountant's report were taxes that were owed to the government as part of the liabilities of the corporation?

A. Absolutely. It was always with it from the very beginning.

Q. And I said to you that we were through loaning any money or making arrangements for loaning any more money to the corporation because we felt that there was no hope for the corporation, is that correct?

A. Mr. Werner, you --

Q. Answer me if that's correct or not.

A. I don't like to say yes or no. I like to make a question to this point, I believe at this point, because I always say yes or no to you and I don't think I should say at this point. I also --

Q. Well, do you have a recollection of that? A. Yes, I have a recollection.

Q. Well, what was your recollection?

A. I'm trying to recollect something that always existed. So I don't think it makes any sense whether it was in November in '68 or '69, or whether it was another day, because it always did exist there. My recollection is you, as a backer, never really (T.201) backed me up. If I needed 5,000, you give me 1,000. If I needed 10, you give me 3; or whatever. I don't even know how much you really put in there.

Q. How does \$30,000 sound, Mr. Bua?

A. That's what you made me sign, Mr. Werner.

Q. Were there notes to indicate that we signed for \$30,000 worth of notes that went into the corporation, Mr. Bua?

A. Well, I really don't know. If you have them I would like to see them myself.

Q. Would you? Mr. Dinan? THE COURT: Don't stop for that now.

Q. Mr. Bua, what I want to point out is this: In November we purchased accounts receivable and got a check to Hugo's Continental, Inc. in the amount of eleven thousand some odd dollars. Do you recall that? A. I recall that.

Q. All right. Do you also recall that there was a specific discussion that there were Internal Revenue taxes that had to be paid?

A. That's why you give me those money. Q. That is correct.

A. Because you say they were going to deport me otherwise.

(T.202) Q. That I was going to report you?

A. No, no. The Internal Revenue or the Immigration. The Immigration was going to deport me. You told me this.

Q. You didn't say that to me?

A. No sirree. I didn't even know what you were talking about.

Q. Well, you knew you weren't a citizen, didn't you?

A. Well, of course I knew I was not a citizen. But I also knew you were a lawyer and I feel what you told me was right.

Q. Well, isn't that the first time you told me you weren't a citizen, Mr. Bua?

A. No, sir. You knew all along I was not a citizen.

Q. All right. Now, this money was deposited into Hugo's?

A. Excuse me. As a matter of fact, before I answer the question, you knew all along so well that that's the reason we did not--I could not be a permittee in Hugo's Continental. Isn't that a fact? We had Mr. Hertz as a permittee.

Q. I'm not answering questions here, Mr. Bua.

A. No. You say you didn't know. I'd like to say that you wanted also to file papers for me to become a citizen, when then you never followed through as usual.

Q. Mr. Bua, you had an attorney during all this time, (T.203) did you not, handling the affairs of the corporation? A. I had an attorney.

Q. Who was the attorney?

A. I even forgot the name.

Q. Kamins, could that be the name? A. Kamins, yes.

Q. He was representing you as well as your corporation during this entire period, was he not?

A. He was to a point, Mr. Werner.

Q. All right. Let's go on. Mr. Bua, I'm trying to get to the point in November when we purchased your accounts receivables. A. Yes.

Q. Was a check brought into your office for eleven thousand some odd dollars by Mr. Smith?

A. If it was brought in in my office it never touched my fingertips.

Q. Did you ever see it? A. The check? Q. Yes.

A. I saw the check to pay Internal Revenue, so you say.

Q. And what happened?

A. That was the purpose.

Q. Yes, it was. Then why didn't you pay Internal Revenue, Mr. Bua?

(T.204) A. Why didn't I pay Internal Revenue? Q. Yes.

A. Checks prove that at the time I had no control. And you put Mr. Bob Smith in charge on this.

Q. Now, let's prove that, Mr. Bua. If your Honor please, I would like to show the witness -- THE COURT: Show it to him.

MR. WERNER: It is entered for identification, your Honor.

THE COURT: All right.

BY MR. WERNER:

Q. Now I want you to look at that, Mr. Bua, -- A. Yes.

Q. -- and tell you that that is a copy of the deposit and check record of the Connecticut Bank & Trust Company of Hugo's Continental, Inc. A. Yes.

Q. Now, you had the right to sign checks at that time, did you not?

A. Once the 11,000--here it is, \$11,462.42 were in the office so you call at the time you people went to the bank--you, Mr. Bob Smith, change the names and I thought you were paying Internal Revenue because I always trusted you. I had a lot of faith in you.

(T.205) Q. Mr. Bua, that is the account of Hugo's Continental Restaurant, Inc. and it was deposited into that account, was it not?

A. Before we deposit those money there took place change of signature, if you recall that.

Q. Mr. Bua, you continued to sign on Hugo's Continental Restaurant, Inc.--

A. No.

Q. --until January and February?

A. After New Year's Eve when I throw you all out of the place.

Q. You threw us all out? A. Yes.

Q. Okay. Well, how did you lose your right to sign on this, this account?

A. Because you told me that the Immigration was going to report me and I'm not a good financial businessman. You might be a good front man, a good maitre d', and that's where I want you to be. We will let Mr. Bob Smith take care of the books from now on. We pay Internal Revenue and you have nothing to do. We went to the bank. I took off the signature. Bob Smith took over from there on. And under your guide very strongly because whatever he did I feel was only under your guide.

(T.206) Q. Mr. Bua, you have quite a personal resentment against me, do you not?

A. No, Mr. Werner, I do not at all. But you did what you did to me and I believe -- Q. All right. Let's go on.

A. I don't have resentment. For what reason?

Q. That's a good question. Mr. Bua, this account continued into 1968, did it not, Hugo's Continental, Inc.?

A. Mr. Werner--

Q. Please answer the question. Did it or did it not?

A. The account 1968, when did we close down Hugo's Continental? I don't even know when we close or when I closed.

Q. I have no idea, Mr. Bua. When did you close?

A. I don't want you to put words in my mouth at this point because I really don't recall dates. That's a fact.

Q. Let's get into this throwing us out. What happened at the end of the year of 1967? Do you recall that year?

A. Yes. Before the New Year's Eve, that I recall we had a very strong argument, when I throw you out of the office. You recall very well that I came back from playing golf. My sister was downstairs one afternoon and I say what are you doing downstairs. I was very upset because there were a lot of books to be done. And she says they are having a meeting (T.207) upstairs. I say who? And she says Werner and who ever it was--Kerin, I think, was up there too; Bill Kerin. And you were having a meeting with, I believe, Frank Smith and Bob Alesi. I don't recall. But I do recall one thing: That I was very upset when my sister said to me they don't want you upstairs. Which I came upstairs and I knocked the door open, if you recall very well. Nobody's going to tell me they don't want me in my own place. Because that time I did own.

Q. It was your own place, Mr. Bua? A. Yes.

Q. You owned the stock of the corporation?

A. That's when I start strongly feel that I was being taken as a fool, and I was going to stop being taken as a fool.

Q. And you threw us all out of the place? A. That's right.

Q. Did you ever see me in that place again, Mr. Bua?

A. I don't remember. I don't think I did see you after that.

THE COURT: You had just come back from playing golf?

THE WITNESS: Yes.

THE COURT: Where, in Florida?

(T.208) THE WITNESS: No, no. Not Florida. I never saw Florida in my whole life, your Honor.

THE COURT: Then this was in the summertime?

THE WITNESS: Yes. It was in the summertime sometime.

THE COURT: Of '68?

THE WITNESS: It must be, your Honor. THE COURT: All right.

THE WITNESS: Not necessarily, because I did play golf even --

THE COURT: In the winter?

THE WITNESS: -- in the winter, as long as was no snow on the green.

THE COURT: All right.

Q. (By Mr. Werner) Well, Mr. Bua, you do very specifically recall that by the end of 1967 you wanted no part of us; Mr. Smith, Mr. Alesi or anybody, is that correct?

A. I don't know if it was the end of '67. Perhaps it is. I don't want to say it is because I don't recall. I only recall that I want no part of you people. After New Year's Eve, the New Year's Eve, after three months I close because I couldn't do it. Oh, actually I didn't want no part of you three months before closing the place. So I don't recall what year (T.209) it was. I think it was '68 actually, not '67. '68.

Q. Mr. Bua, the claim of the government here is for four quarters: The third quarter of '67, the fourth quarter of '67, the first quarter of '68 and the second quarter of '68. That brings us into approximately June of 1968. That's the last claim that they have for any unpaid withholding taxes. So it would have to have been the New Year's between '67 and '68 that you decided to take over on your own, is it not? That was the only New Year's --

A. Just the time that I close. At the time that I close, prior.

Q. That was the New Year's prior to the closing of your operation?

A. Exactly, yes. Then I was all alone, yes, I was. Q. Right. A. Yes.

Q. So nobody had any more to do with you subsequent to that New Year's Eve. When I say "nobody", I mean neither I, nor Mr. Alesi, nor Mr. Smith, Mr. Kerin, Mr. Kaplan, I?

A. No, because --

Q. That was the end of it?

A. You people made me sign \$30,000 note, payable \$200 a week, if you recall.

Q. That happened subsequent to that, Mr. Bua. But I'm (T.210) just trying to get the time down as to when you ceased relationship with me.

A. I think prior the New Year's Eve, that's it. Prior to the closing. That's it.

Q. And then you continued to do business as Hugo's Continental, Inc. and you continued to sign checks out of that account. Put in monies and sign checks, did you not?

A. I think I did. I don't remember too many because it was everything C.O.D. and I didn't even have enough money to put a deposit, really.

Q. But you continued to operate the business with this checking account?

A. Oh, yes, I did.

Q. So you never were put off the checking account, as far as your ability to sign checks? A. Yes, I was.

Q. Well, who put you off, Mr. Bua? A. You.

Q. How did I do that?

A. Because you would not give me the money to apparently pay Internal Revenue. Otherwise the Immigration will deport me.

Q. Why didn't you pay Internal Revenue the money?

A. Because you had control and Mr. Bob Smith took name of the checks.

(T.211) Q. Let me ask you a question, Mr. Bua. Were you asked to come in to discuss this entire matter by the Internal Revenue agents?

A. What was that again?

Q. Were you called in to discuss the matter of unpaid withholding taxes by the Internal Revenue Service at some time? A. Was I called in? Q. Yes.

A. Yes, I think I was called.

Q. Didn't you have a conference with a Mr. Sargis?

A. Yes, that's right. He did come there and he told me if you don't close Saturday we will close you, so isn't it better that you close yourself.

Q. And did you have any further discussions with Mr. Sargis about this?

A. After we close? Q. Yes.

A. After we close he wanted me to give--to audit all the books and give him every figure. And I said to Mr. Sargis I think it would be highly impossible for me because I got no money to hire an accountant. But one thing I can do: Give you all the books I have in the place and you audit, yourself. And anything, any time you need me call me, I'll be there.

(T.212) Q. And did they need you, Mr. Bua?

A. No. They never needed me.

Q. They never talked to you about this matter?

A. No, because they went through books and everything. They never talked to me about it.

Q. Well, didn't you give a statement to the Internal Revenue Service?

A. I went once in and talked to them, yes. I did, yes.

Q. What did you talk to them about, Mr. Bua?

A. I don't recall.

MR. DINAN: Objection, your Honor, under the best evidence rule. If he gave the statement, perhaps the statement will explain.

THE COURT: The answer may stand.

Q. (By Mr. Werner) Were you advised by the Internal Revenue, Mr. Bua, that if I were to pay these withholding taxes then you wouldn't have to?

A. No, sir. I don't believe.

Q. Nobody ever told you that, Mr. Bua?

A. That if you were left to pay, I will not?

Q. Yes. A. No. Nobody told me that.

Q. Are you sure about that, Mr. Bua?

A. I'm not sure about anything, really.

(T.213) Q. Well, can you be sure on this point, Mr. Bua? Is this the first time you ever heard that statement?

A. That if you--but I don't think I need the statement to be here that if you pay I don't have to. It's very elementary.

Q. You know that. A. Well, of course I know it. Q. I see. Okay.

A. I don't need anybody to tell me that. I believe any baby can understand that. If you pay, I don't have to.

Q. So it would be in your interest, obviously, that if I were to pay these taxes then you wouldn't have to pay the taxes?

A. Well, the interest, of course it would be on me. But the reason why I think you should pay is because you trick me into give you the account receivable, take my signature off the account in order to give me the eleven thousand some dollars, which I just read before, and those money really never did go to Internal Revenue.

Q. Why didn't it, Mr. Bua?

A. Because you made sure it didn't, I guess. You wanted to keep the place open.

Q. What do you mean you guess?

A. Because you knew the place was making money, but you knew the place was undercapitalized all along. But you (T.214) maybe wanted to see it through.

Q. Well, Mr. Bua--

A. You want the place very badly too, at the time.

Q. If the corporation was making money, then why didn't you pay the withholding taxes all along?

A. Because we were \$58,000 in the hole to begin with, which you were supposed to back up and you guys never came with the money.

Q. \$58,000? A. Something to that extent.

Q. In any event, Mr. Bua, you did know that you owed taxes to the Internal Revenue Service all during this period?

A. Since we opened, I did know. Yes.

Q. And you made no effort at all to pay them?

A. Oh, yes I did. Q. You did? A. Oh, yes. Absolutely.

Q. When did you pay them, Mr. Bua?

A. I made payments weekly of \$1,000 to Internal Revenue. At the beginning. When I was in full complete charge of the place I also made good of the bouncing check of Mr. Varros, or whatever the names were. I paid it. Naturally, not my cash; from the corporation. Then at the beginning I was absolutely in full control and I paid Internal Revenue.

(T.215) Q. You were in full control. How long were you in full control, Mr. Bua?

A. I would say about seven months, six months.

Q. And you started in March?

A. I don't really remember dates. But I believe. Then Mr. Alesi came in the picture and he became a vice-president, didn't he?

Q. I don't know. Mr. Bua, it seems that you can't recollect a lot of things, but you're very specific about the control I had over you. That you remember very well --

MR. DINAN: Objection, your Honor. This is his witness.

THE COURT: Argumentative. Do you have a question to ask?

A. Mr. Bua, I would like to show you a report that was prepared on Hugo's Continental. Do you remember that in any way at all? It is dated for October 31st, 1967.

A. Yes, I think I recall it.

Q. Good. Would you look at the first page, please? A. Yes.

Q. And the first items that are owed? A. Up here?

Q. Liabilities. A. Yes. Account payable.

(T.216) Q. Yes. A. Federal withholding, second quarter.

Q. Now, do you know when the second quarter is, Mr. Bua?

A. Do I know when the second quarter is?

Q. Yes; of a year.

A. Yes. It's in June, I believe. Every three months is a quarter, right?

Q. April, May, June. So those taxes weren't paid even though you were in full control of the corporation. And this is on October 31st. Is that correct?

A. I don't recall dates, like I say. I really don't. I'm not trying to--

Q. Do you recall the statement?

A. I recall this statement, yes, very well.

Q. And that's dated October 31st? A. Yes.

Q. And it shows that Internal Revenue was not paid for the second quarter of 1967?

A. We were always behind Internal Revenue because we started behind, like I said before.

Q. But, Mr. Bua, why didn't you pay those taxes?

A. Because we had no money to pay. How am I going to pay taxes? I couldn't even pay my mortgage on my house.

Q. All right. Then \$11,000 was provided for you for (T.217) the purpose of paying the taxes, was it not?

A. But you never did pay, apparently, did you?

Q. Didn't you go down to the Internal Revenue with Mr. Smith to arrange for payment of those taxes?

A. Yes, I recall that very well.

Q. Well, wasn't it your obligation to pay those taxes?

A. Mr. Werner --

Q. You had the money, Mr. Bua.

A. No, no. Wait a minute. You're putting words in my mouth. I'm sorry. You are putting words in my mouth. You are trying to. The money that you give me, eleven thousand some dollars, was supposed to be paid Internal Revenue. Q. Correct.

A. You scare me that the Immigration was going to deport me otherwise. Because we were ready prior to that, Mr. Werner, to close Hugo's Continental. As a matter of fact, I'll have you to know that liquors were in every trunk of our cars, so we say at least we close Hugo we get trunk home. I think Mr. Alesi can testify to that. I think Mr. Ross, his brother-in-law, and I think Mr. Bob Smith can also testify that. Everybody had liquor in their trunks. And when you come in with the checks and you start talking, we put liquor back.

Q. Well, sure, Mr. Bua. Because you were advised by me on that day, earlier on that day, that we were through with putting any more monies into that corporation, is that not true?

A. What kind of money you ever put? I say I needed 5,000, you put 1,000.

Q. Mr. Bua, please. I'm talking about that day that you now tell us that you put liquor in your car and everybody else put liquor in their car.

A. That's right.

Q. I came in and said to you, Mr. Bua, we are not going to put any more money in this corporation.

A. And I was ready to close.

Q. Yes. And you also visited Mr. Kerin, didn't you?

A. No, sir. Mr. Kerin, I did not visit Mr. Kerin.

Q. You weren't in his office crying as to --

A. No, sir. I never cry in his office. The only time I cried is in my office at Hugo's Continental, upstairs, when you took away all my power. And not understanding that the place was very badly undercapitalized. And you said to me that I don't know how to run the business, I'm not financial businessman, and which I know the problem I had and you knew them, too. That's what made me cry.

Q. Well, Mr. Bua, you've been in other businesses since, haven't you? (T.219) Yes, I have.

Q. And you were in one in Southington? A. In Southington? No.

Q. Or Unionville? A. No. Neither Southington or Unionville.

Q. Did you run a restaurant recently? A. Very recently? Yes, I did.

Q. Last year or two? A. Yes. In November of last year.

Q. What happened?

A. I went in with a builder, built up a restaurant. I was teaching at the Culinary at the time and my wife was deadly against it. I was making a good salary. But I wanted to go in business. Perhaps always in back of my mind to prove you that I know how to run a business.

THE COURT: What was the amount in debts that you took over from Camelot? How much did they owe when you started off?

THE WITNESS: Well, the accountant added something like--again I don't recall--something like \$28,000, without Internal Revenue. But then as we went along many, many other bills came out, which we had a conversation with the accountant. The accountant says it's not my (T.220) fault, those are the bills they give me and those are the only bills that I could enter.

I don't know other bills. They must have added many, many other bills because it was nearly \$50,000 we took over the place in debt. In fact, Mr. Werner at the time had suggested to put the place in Chapter XI, which again he never follow it through.

Q. (By Mr. Werner) Well, it would be a wise thing to do, wouldn't it, Mr. Bua?

A. Well, I suppose you know the law. I'm not a lawyer.

Q. But you had your lawyer, Mr. Bua, didn't you? A. I had my lawyer.

Q. And you asked him questions about legal matters, didn't you?

A. Yes, sir. I asked him some question. But, Mr. Werner, you know that the corporation never did pay this poor guy because there was no money to pay.

Q I didn't know that, Mr. Bua.

A You know it. You don't want to know, for your own convenience.

Q In any event --

A In any event, it came to a point that my lawyer didn't even want to know about Hugo's Continental. You did all the papers.

(T.221) Q What papers, Mr. Bua?

A Everything that we signed, you did it.

Q What did you sign? A Oh, I don't know. I signed so many papers, I don't recall.

Q Mr. Bua, you did sign an agreement with Mr. Smith about an employment contract and a purchase by him of stock in the corporation, did you not?

A We signed them for Frank Alesi.

Q No, you signed it for Mr. Smith. I'm asking about Mr. Smith.

A I think we promised Mr. Smith -- now if I did sign it could be, very well, that I did. We promised Mr. Smith that if the place was going to go on he was going to get a certain percentage, plus his pay. Isn't that true? Did I even say it's ridiculous, the percentage? We're going to work for Mr. Smith, at the time, I even said.

Q But you signed that agreement with Mr. Smith.

A You made the paper, Mr. Werner. Q You're sure of that?

A To a point. Mr. Bob Smith was going to get something, about 13 to 14 per cent reaching a certain point, 13 to 14 per cent of the gross profit to him. Now, and the national figure is only five per cent. You were going to give 13 per cent to business manager. (T 222)

Q How much were you going to give, Mr. Bua --

THE COURT: Well, I don't want to rehash this whole business.

MR. WERNER: All right.

Q In any event, Mr. Bua, you did go down to Internal Revenue to pay the taxes that were owed in accordance with that and you never did pay them, even though you had money in the account?

A No, sir. I disagree with you there. The money that you gave me--

that's one thing I remember for sure -- to pay Internal Revenue, they never know -- allow any more to sign checks and you told Mr. Smith how to disburse those checks. And I recall so well that you even told after you pay Ross, our distributor, our biggest distributor if you recall at the time, your friend Ross -- Q Rosow, you mean? A Rosow. -- not to deliver unless it was COD, because you have nothing to do with me after that. Q That's correct. A I know that's correct.

Q But I did instruct you to go and pay those taxes to Internal Revenue -- did I not?

A No, no, Mr. Werner, you did not instruct me to go and pay tax Internal Revenue because you took over.

THE COURT: All right. We've been over this several times now. (T223)

MR. WERNER: I have no more questions.

THE WITNESS: That's a fact.

MR. WERNER: Just one more question, your Honor, if I might.

BY MR. WERNER:

Q I took off and you never saw me again, is that correct?

A After the New Year's, yes.

Q After this November--this time that we bought the accounts receivable you never saw me again?

A Oh, yes. I saw you in the office with Bob Smith and telling him what to do. And my sister can testify that, too, because she was the bookkeeper.

Q. Wait a minute. When was this?

A. After you give the \$11,000.

Q. Yes? A You were in my office. You just claim you never see me again.

Q. Then you threw me out? A. I don't really recall when I threw you out.

I know I threw you out one day. MR. WERNER: Thank you.

(T.224) CROSS-EXAMINATION BY MR. DINAN:

Q Mr. Bua, you live in New York right now, in Long Island? A Yes, sir.

Q How did you come to appear here today? Were you served with a subpoena? A You called me up.

Q When did I call you? A The day before yesterday.

Q Are you appearing here voluntarily pursuant to my telephone call?

A Yes, sir.

Q And when did you drive in, this morning?

A I left this morning at six o'clock.

Q You at one time were a party to this suit, were you not? You were served with a complaint? A Yes.

Q And on different occasions you were noticed for your deposition and at that time you were ill, is that not correct?

A That's correct. I had pneumonia.

Q In any event, the government caused to have entered against you a default judgment? A Exactly.

(T.225) Q In the full amount of the liability that was claimed in that Third-Party complaint? A Yes.

Q And you have not contested that. You have made an agreement --

A I am paying.

Q Now are you making payment on that liability?

A They're taking away, every year, my returns.

Q Well, you first entered into an agreement with the Internal Revenue Service? A Yes.

Q To pay -- A \$20 a month.

Q \$20 a month. And that was agreed by the Internal Revenue Service to be all you could pay, is that correct? A Exactly.

Q And now they are withholding any refunds that are due you on your income tax returns for how many years?

A Right. Well, for three, four years.

Q So that all of this money is being paid against your liability? A Right.

THE COURT: You mean against his liability for the --

MR. DINAN: Default judgment, your Honor; for (T.226) the taxes

involved in this suit. THE COURT: Okay.

Q (By Mr. Dinan) You have never seen me before today, have you, Mr. Bua?
A I never saw you, no, sir.

Q All right. Now, Mr. Bua, has anyone from the federal government--myself or anyone on my behalf--ever told you that if Mr. Werner is held liable in this case that you will have no liability? A No.

Q I never told you that? A No.

Q And nobody from the Department of Justice ever told you that? A No.

Q And you understand by appearing here voluntarily the United States Government has promised you nothing?

A No. You just call me up. As a matter of fact the first time the other gentleman call me up it was late at night, I was so upset that I said I thought someone was going to want to attach my salary. Because that's the reason I moved from Connecticut, to be honest.

Q You moved from Connecticut to Long Island because you were afraid that the government was going to attach your salary here?

(T.227) A Right. When I was teaching at the school they did for one whole month, the Internal Revenue attached my complete salary. I told them how am I going to live? They told me go on welfare.

Q Go what? A GO welfare.

Q Go on welfare? A That's what they told me.

Q The Internal Revenue Service?

A I told them if I have to go on welfare I quit the Culinary.

Q Now, when you finally negotiated --well, you were working for Camelot as a chef or a maitre d' before you bought into it, were you not?

A Yes. I was supposed to --

THE COURT: You're not going to go through that whole transaction, are you?

MR. DINAN: I'm just going to show how much money was actually invested and how it was invested by this man.

THE COURT: Don't we have that in here already?

MR. DINAN: I didn't think it was clear, your Honor. If your Honor is satisfied that he knows how this money got in, then I'll skip that line of inquiry.

(T.228) THE COURT: Well, you are talking about --

MR. DINAN: I'm talking about the unpaid checks that he was holding from Camelot.

THE COURT: Unpaid checks?

MR. DINAN: Unpaid salary checks that he was not allowed to cash.

THE COURT: I hadn't heard about those.

MR. DINAN: That's the line of inquiry, your Honor.

Q (By Mr. Dinan) Now, when you worked for Camelot you were receiving \$300 a week, is that correct? THE COURT: Oh, yes.

Q And those checks were given to you in hand, but you were not allowed to cash them; is that correct? A That's correct.

Q All right. How many checks, approximately, did you receive from Camelot as salary that you were not allowed to cash?

A Like I say, minimum ten; but after they didn't even give me any more, so it must be--I don't know really how many.

Q In any event, that was the liability of the corporation? A Yes.

Q And that money never was, in fact, paid personally (T.229) to you, was it? A No, never.

Q That was also part of your investment in the Camelot Restaurant when you bought the stock?

A That's what I always thought.

Q Did Mr. Kerin and Mr. Kaplan and Mr. Werner advise you to buy this stock in this manner, by putting up the money that was owed to you?

A Well, no. I believe at this point I was very upset I couldn't get the money and I told Mr. Nichols, I believe it was, these three fellows' attorney, I say you know one thing if they didn't want to sell I can go to the Labor

Department and claim my salary. I will put them in bankruptcy. So on this matter they got no choice at this point. So their attorney, I think, told them.

Q Skipping up now to the November meeting, you recall that meeting in November when Mr. Werner discussed the tax liability that was outstanding?

A When he lent us the money? Q Yes. A Yes.

Q Now, up to that time you did, in fact, have an agreement with the Internal Revenue Service to pay taxes, so much money each month, did you not?

A Yes.

(T.230) Q When did that liability for that tax arise? Were those taxes that were owed by Camelot when you bought it?

A Well, we always owed money. When I bought the Camelot I had to make good two checks for Internal Revenue, two quarters.

Q And at that time the Internal Revenue Service entered into an agreement with you, did they not? A Yes.

Q Allowing you to pay so much money each month?

A No. Every week I paid a thousand dollars.

Q And did you, in fact, pay that thousand dollars? A Yes.

Q Every week? A Yes.

Q For how long? A I think about four to five weeks.

Q Four to five weeks? A Yes.

Q So that you were trying to keep current when you had control of the corporation? A Yes.

Q All right. Now, in November when Mr. Werner had this meeting and brought your accounts receivable he informed you that that money was going to be for the payment of the taxes owed to the government by Hugo's Continental, is that (T.231) correct?

A That is correct. To a fact that if he wouldn't pay the Internal Revenue I would have been deported.

Q Did you ever have that check in your hand? A Never.

Q Did you ever see that check?

A I don't really recall that I ever seen that check. Except I don't think the check was ever a check. It was through the bank and then disbursed by them. I don't think I ever saw the check of \$11,000.

Q But it is your testimony that after that check was taken over to your office Mr. Werner would not allow you to sign any more checks, is that correct?

A No, because we went to the bank and changed immediately with Mr. Bob Smith, Mr. Werner, and I was off the signature then.

Q They took your name off the signature card?

A Right. I was not allowed to sign anything.

Q Mr. Werner also stated on his Direct Examination that you went down to the Internal Revenue Service to pay your taxes. Did you go down to pay your taxes or inquire about them?

A With what?

Q That's my question. What did you have to pay your taxes with?

(T.232) A I think the reason why I went down there is because they called me to talk to me, to make some agreement or arrangements. Because I was still the president of the corporation.

Q But, in any event, Mr. Werner never gave you that check so you could go own and pay the Internal Revenue Service? A No.

Q You also testified on Direct Examination, Mr. Bua, that subsequently Mr. Werner, Mr. Kerin and Mr. Kaplan made you sign a \$30,000 note?

A Right.

Q When were you required to sign a \$30,000 note?

A Well, at one point it was Sergio Franchi, the singer, if you people know. He's a big singer, TV star; Sergio Franchi. Q All right.

A Being he was a good friend of mine, I know him for many years, he used to come there. He liked the place. He wanted to buy the place, as a matter of fact. I told him the problems that we had--that I have a 51 per cent

there. He want to buy those papers. Mr. Werner asked him for \$75,000. And Mr. Sergio Franchi says that they are crazy.

Q Well, how did this lead to you signing a \$30,000 note?

(T.233) A Well, because they say we going to release you the papers. Now, why I say that is because I was feeling or thinking maybe that somebody was going to buy in and maybe pay those 30,000 and put some fresh money in the business. As a matter of fact, it was a certain person by the name Nick, the prior owner of La Scala, which at the time he phoned and he came and talked to me. And I told him the problems and he wanted to come with me. But he had no money. You know, he just wanted to come with me. And I needed somebody to pay off either them or to put some fresh money and let the corporation pay them \$200 a week, which would have been all right, too. And at this point he didn't have no money and then, of course, he immediately took off with somebody else to back him up.

Q Did you pay \$200 a month on that note?

A Yes. I made some payments. As a matter of fact, one week I didn't make them I had twenty phone calls.

Q From whom? A From Mr. Kerin and Mr. Werner.

MR. DINAN: No further questions, your Honor.

CROSS-EXAMINATION BY MR. NEIMAN:

Q Mr. Bua, how much money have you paid to Internal Revenue so far in connection with this particular claim?

A Well, we made agreements to pay \$20 a week--a month, I mean. Because that's the determination that that's all I could afford from my salary, what I pay, and my childrens. I made a few payments. I don't recall, maybe two or three. I don't really recall how many. Maybe one, two; I don't know. And then the tax were due and I had coming back something like \$700. And this money was put towards my bill there. So I felt at the time that if I have to pay \$20 a month, it's twelve months out of the year makes \$240, why should I pay \$600. They didn't give me nothing back. So they broke their promise and I forgot to pay.

Q Now, when you say "they", who are you talking about?

A Internal Revenue, I mean.

Q Now, do you know how much in dollars you have paid so far?

A I believe my wife has got some papers in her pocketbook or something, or maybe she remembers. Because I only work and bring money home. My wife is my house bookkeeper.

Q But now there was at least \$700 and maybe --

THE COURT: Well, there is a way of finding out. This witness doesn't know. If you have to know, go to the Internal Revenue Service and find out. Let's not waste a lot of time here.

(T.235) Q (By Mr. Neiman) Now, Mr. Bua, did you ever get a statement from the Internal Revenue Service as to what they put that money to? A Yes.

Q Do you have that statement? A Yes.

Q Is it in writing? A Yes.

Q And did you bring it with you?

A No, sir. I didn't think I had to.

Q Do you remember what that statement said? A Yes.

Q And what taxes did they put the money to?

A They put the money toward what I owe.

Q To the payment of this judgment?

A I think my wife can answer you those questions much more correctly.

Q Is that your wife sitting here? A Yes.

MR. NEIMAN: Thank you. No further questions.

MR. WERNER: If your Honor please, I wonder if I just might clarify that \$30,000 matter that Mr. Bua says Mr. Franchi was involved or somebody else was.

THE COURT: Verify it how?

(T.236) MR. WERNER: By an agreement that he signed.

THE COURT: Well, I think we have agreements. We don't have any cancelled checks. We have agreements and notes. But otherwise there's no further clarification.

THE WITNESS: There must be some cancelled check or payment to Bill Kerin of \$200.

THE COURT: No. We are talking about \$30,000 to the corporation.

THE WITNESS: No. The corporation owed Mr. Kerin \$30,000, which was including Mr. Werner. I did make several payments. THE COURT: Yes.

THE WITNESS: I did. And we must have cancelled check for that because they did receive \$200 a week. THE COURT: Yes.

MR. WERNER: What I'm trying to point out, your Honor, is that at a certain time Mr. Bua requested Mr. Kerin to give up his option rights and in return for that he signed an agreement that he and the corporation owed the three of us \$30,000. That was the purpose of the agreement.

THE COURT: All right.

MR. WERNER: If that would be informative, your Honor. I don't mean to prolong this.

(T.237) REDIRECT EXAMINATION BY MR. WERNER:

Q Mr. Bua, after you had eliminated us from your presence in the restaurant was there a time that you had your lawyer call me with regard to Mr. Kerin giving up his option rights?

A I don't know how it came about, that giving up that option rights.

Q Well, you wanted to eliminate his option rights at a certain point, didn't you?

A Well, I felt because after you did not pay Internal Revenue --

Q Yes, sir.

A Don't say yes or no because I'm not going to say yes or no. I felt that when you have cheated me out, not paying Internal Revenue, I didn't want you; and no matter what it would have been, if I would have felt I would have got in bankruptcy, which I did, and I wouldn't owe you nothing anyway. If I would have made it, so \$30,000 you would get it. That's exactly the way I felt. So I did not make it, I went in bankruptcy, you got nothing except for the checks you did get from the corporation.

Q Well, those checks, Mr. Bua, might have been two or (T.238) three or four. They were no more than that, isn't that a fact?

A I never claimed they were more. Might be five, six, too, perhaps.

Q It could have been five or six? A Yes. I don't recall.

Q But the point is that you, at one point -- THE COURT: All right.

Q Now, this is an agreement I show you, Mr. Bua.

THE COURT: Is that the one that spells out this relinquishment of the option rights? MR. WERNER: Yes, your Honor.

THE COURT: May be marked an exhibit.

MR. WERNER: Thank you, your Honor.

(Plaintiff's Exhibit 8: Agreement dated March 15, 1968, marked full exhibit.)

THE COURT: Is there anything else of this witness?

MR. WERNER: No, your Honor.

THE COURT: You can step down, Mr. Bua. (Witness excused.)

THE COURT: What else is there in this case?

MR. WERNER: If your Honor please, the plaintiff rests.

THE COURT: How long are you going to take, (T.239) Mr. Dinan?

MR. DINAN: Ten minutes, your Honor, just to mark exhibits and introduce them into evidence, and I will have no Direct Examination of any witness. Excuse me. There may be Direct Examination of one witness. (Pause)

MR. DINAN: I have one witness, Mr. Alesi, who is here, who is a Third-Party Defendant.

THE COURT: A what?

MR. DINAN: Mr. Alesi is here. He is a Third-Party Defendant in this case. He was not here yesterday...

* * *

MR. DINAN: At this time, your Honor, the government will offer into evidence Exhibit 1, the signature card of Mr. Robert Smith.

(T.240) Exhibit 2, the bank statements of the Connecticut Bank & Trust Company pertaining to Hugo's Continental account at that bank.

Defendant and Third-Party Plaintiff's Exhibit 3, a group of checks all signed on November 20th and 21st by Robert Smith.

Exhibit 4, the bank statement of Connecticut Bank and Trust Company for Robert J. Smith Business Account for the period December 5, 1967 through December 29, 1967.

Exhibit 5, a partial statement of assets and liabilities as of October 31, 1967, pertaining to Hugo's Continental, Inc.

Exhibit 6, Copies of four notes which have previously been identified.

Exhibits 7 and 8: They are the assessments certified under Rule 1733 of Title 28 and authenticated under Rule 44 of the Federal Rules of Civil Procedure. These account cards or certificates of assessment and payment pertain to Howard Werner, Robert Smith and Frank Alesi. I would request, with the Court's permission, to withdraw and make copies of two of the exhibits so that I can remove the originals, your Honor. I have copies in the courtroom.

(T.241) THE COURT: Granted. MR. DINAN: Thank you.

(Third-Party Plaintiff and Defendant's Exhibits 1 through 6 for identification: Marked full exhibits.)

(Third-Party Plaintiff and Defendant's Exhibit 7: Assessment sheets, Frank Alesi, Robert Smith, marked full exhibit.)

(Third-Party Plaintiff and Defendant's Exhibit 8: Assessment sheet, Howard Werner, marked full exhibit.)

MS. CHEIKES (an associate of Mr. DINAN): The government calls Mr. Frank Alesi to the stand.

(T.242) FRANK ALESI, called as a witness, being first duly sworn, was examined, and testified as follows:

THE CLERK: Will you state your full name and address for the record, please?

THE WITNESS: Frank Alesi, No. 3 Wohseepee Drive, Brightwaters, New York.

DIRECT EXAMINATION BY MS. CHEIKES:

Q Mr. Alesi, what is your profession?

A Right now I'm a real estate salesman.

Q At the time you were associated with Hugo's Continental Restaurant, what was your profession at that time?

A I was an entertainer.

Q Were you a musician? A Musician, yes sir.

* * *

Q (By Ms. Cheikes) When and about at what point in time did you become associated with the restaurant?

A Well, we were hired to play there. Q When?

(T.243) A I don't know. It was a while ago. I don't know exact dates.

Q Do you know approximately the years?

A That's the thing. I don't know what year it was. I believe it was in May or June.

Q Of '67? A I believe so.

Q You started there as a musician? A Yes.

Q Were you offered any percentage of the business at a later date while you worked there?

A Well, Mr. Werner had told me how would I like an option to purchase a certain percentage of the business by entertaining and helping out.

Q All right. Was a contract drawn up to this effect? A Yes.

Q Now, you were to get 20 per cent of the stock at a future date?

A I believe so, right.

Q And you signed this contract? A Yes.

Q Who drew up this contract? A Mr. Werner.

Q Did you ever get the 20 per cent of the stock? A No.

(T.244) Q All right. Now, as an employee of Hugo's and after signing this contract what was your impression as to who ran the business?

A It was no impression. I only took orders from Mr. Werner.

Q All right. Did he tell you, for example, what type of duties were to be under your control? A Yes.

Q Do you recall a meeting in November of 1967 at which Mr. Smith, Mr. Bua, Mr. Werner, Miss Bua and yourself attended?

A A meeting? Q Yes.

A We had meetings all the time.

Q This particular meeting dealt with the audit that had been made of the restaurant's books.

A Well, I remember Mr. Werner coming in and sitting us all down, telling us that we were in bad shape and we had to run it his way and everybody had to do exactly what--their own thing. I had to be responsible for the entertainment and the bar, and Hugo had to be a chef, and Bob had to work upstairs in the office, and so on and so forth.

Q At that time was there a discussion of taxes due to the Internal Revenue Service?

A Not with me. I have no idea if there was. I'm (T.245) saying I don't know.

Q All right. At any time during that meeting was there a discussion of the transfer of accounts receivable?

A Well, I had heard talk of it. I didn't know exactly what was going on. But I have heard that that was going to be done, yes.

Q Did you have any authority to sign checks for Hugo's Continental Restaurant?

A At one time I did, right. Because, well, I was more or less trying to handle the cocktail lounge, managing, and at the time Hugo was putting in so many hours, certain hours he couldn't be there and Mr. Werner suggested that it would be better if both of us can sign in the event that one of us isn't there.

Q Did you decide who the checks were to be paid to?

A Not at all.

Q Did anybody tell you who they were to be paid to?

A No. I signed checks that were already made out.

Q Who made out the checks?

A I believe the bookkeeper, whoever it was at the time.

Q Under whose authority were the checks drawn, do you know?

A I don't know.

Q Who said this person was to be paid as opposed to someone else?

(T.246) A I don't know for a fact.

Q All right. Were you aware at the time that taxes were due and owing?

A No.

Q You had no idea that withholding was not being paid over?

A Well, toward the very end when things--everything was going sour, there was a lot of talk of it around. But actual knowledge, I didn't have interest in the bookkeeping department or anything.

Q Were you aware of Mr. Werner's frequency of visiting the restaurant?

A Oh, yes.

Q Did you feel that he, as opposed to Mr. Bua--or who ran the restaurant?

A Well, I took orders from Mr. Werner.

Q And that was all; you did not take orders from Mr. Bua? A No.

MS. CHEIKES: I don't think there's any further questions.

CROSS-EXAMINATION BY MR. WERNER:

Q Mr. Alesi, you said you never took orders from Mr. Bua?

(T.247) A Orders, no.

Q No. Well, when you first started working there didn't you take orders from Mr. Bua as a musician?

A Not even then. I was an independent contractor. I just came in. We played our music. There was no orders to be given. We played our music. We got off, we went on.

Q But he hired you? A Yes, he hired me.

Q I had nothing to do with that?

A Well, no, I hadn't met you till I got there; right.

Q All right. Now, you say that you only took orders from me during the time that you had an option to purchase stock, is that correct?

A Well, yes, naturally.

Q And you were there from ten in the morning till late at night?

A As of when? You're speaking of after I've spoken to you?

Q Let me ask you as of when did you start this routine?

A Working from early in the morning till late at night? Q Yes.

A After I had spoken to you and you had promised me a percentage, a possible percentage in the business.

(T.248) Q So that it's your testimony that I initiated your purchasing a percentage of the business? A Yes.

Q This was not your desire?

A Was it my desire? Q Yes. A It was not my idea, naturally.

Q It wasn't your idea? A No.

Q That's your testimony? A Yes.

Q All right, Mr. Alesi. I would like to refer you to the testimony you gave at the deposition on October 27th, 1972. And the question was --

MR. DINAN: May it please the Court, may I have the page and the line?

MR. WERNER: Yes, I'm sorry. It is on Page 5, Line 17.

Q I believe it was Mr. Dinan who was doing the examining. And he said:

"Question: Can you tell me how that came to be, how was it you came to participate in the management of Hugo's Restaurant? "Answer: All right. Bob and myself and our drummer were there working as a trio, and we weren't getting enough (T.249) money. We wanted more money. And, of course, he made an offer to give us a meal and he wanted to keep us there because we were increasing the business in the lounge. And we didn't want to stay because we wanted to make more money. And he couldn't pay us more. "Question: When you say that he couldn't, who do you mean? "Answer: Mr. Bua."

MR. WERNER: It is misspelled here "Brewer", your Honor.

"Answer: Mr. Bua. And he then told me that there was a possibility of working out something where I could possibly get part of the business and maybe not take so much money home now, but later on as business increased I would take home a lot more money. And he introduced me to Mr. Werner, whom he said was the backer of the place who put him into business.

"Question: The question was: Was Mr. Werner present when Mr. Bua told you that Mr. Werner was the backer of the business? "Answer: No. Mr. Werner was not present at that time."

Q Now, is that different than your testimony today, Mr. Alesi?

A It sure is.

(T.250) Q Isn't it?

MR. DINAN: Objection, your Honor. Under the rules I believe I can request counsel to finish the rest of that answer.

MR. WERNER: I'll be very happy to, your Honor.

MR. DINAN: Please read Lines 11 through 25 on Page 6, where you just left off, Mr. Werner.

MR. WERNER: I didn't do that purposely, Mr. Dinan.

Page 7.

MR. DINAN: Page 6, Mr. Werner; Lines 9 through 25.

MR. WERNER: Yes, sir.

"Question: Was Mr. Werner present when Mr. Bua told you that Mr. Werner was the backer of the business? "Answer: No, Mr. Werner was not present at that time. At another occasion, though, when he introduced me to Mr. Werner he was there. He says this is the big man, I want you to meet Mr. Werner. And I met him and he told me that Mr. Bua--and he told me

that--Mr. Bua told me that we would sit and discuss it with Mr. Werner and possibly find out a way of getting money into the business, a percentage of the business, to where it would be (T.251) feasible for me to stay there and get a portion of the business, move my family there and possibly through friends of Mr. Werner who knew some builders, possibly have a way of getting me a house with a little money down where I could bring my family. And I was very, very interested in it because as an entertainer I always wanted part of the nightclub business. So I wanted to listen to what they had to say."

MR. DINAN: Now, Mr. Werner, if you will turn to the next page, the next two lines.

MR. WERNER: "Mr. Werner told me that it could be arranged. I could have 20 per cent of the business and at first I wouldn't take home much money, he says, but we would draw up contracts so I could get a minimum salary and as business increased I would get a percentage of the net profits. And I would be responsible for the entertainment and management of the cocktail lounge to make sure that I knew as much as I could about the place, about the business."

MR. DINAN: I submit, your Honor, that that testimony is not inconsistent with what the witness just stated on the stand. It is not proper impeachment.

(T.252) THE COURT: All right. It may stand. The testimony may stand.

MR. WERNER: I was talking of another point here, your Honor. At the beginning of this. That's why I stopped reading.

THE COURT: Continue. MR. WERNER: Yes, all right.

BY MR. WERNER:

Q So that, as a matter of fact, Mr. Alesi, you did purchase a house through Mr. Kerin, didn't you? A Yes.

Q It was one of his houses?

A Well, the whole thing was arranged through you.

Q Well, you had discussions with Mr. Kerin about it, didn't you, Mr. Alesi?

A Naturally.

Q And it was a house he was building, or something to that effect?

A I'm trying to recall. There was a builder--I don't even remember his name. Either you or Mr. Kerin had told me to go to him and he would straighten it out.

Q So Mr. Kerin sent you, not me?

A I don't know if it was you or him at this time. I've spoken to both of you on occasion. I really don't remember which one it was.

(T.253) Q And there came a time, also, Mr. Alesi, that you needed a refrigerator or a dishwasher, did you not? Some appliance in your new home?

A I'm sorry. I don't remember, Mr. Werner.

Q Well, if I attempt to bring back your recollection, there was a refrigerator that you did not have in your new home and you asked me if I would get one for you, and I did?

A That's possible.

Q That's possible. But you have no recollection? A I really don't.

Q But you have specific recollection of my orders and all those things.

That you have a very clear recollection of? A In the restaurant?

Q Yes. A Yes, I do.

Q And other things in the restaurant you don't have a very clear recollection?

A Well, what other things? I mean specifically some things I do.

Q Well for instance, Mr. Alesi, isn't it a fact that you did sign checks on Hugo's Continental account?

A Yes, it is a fact I've signed checks.

Q And isn't it a fact that you would decide who to pay when a merchant came in with some merchandise?

(T.254) A No, sir.

Q Well, who told you who to pay? A You did, sir.

Q I was there at all times when people came in?

- A No. You came in every day and advised me on who to pay.
 Q How long did I come in every day, Mr. Alesi? A Every day.
 Q Well, for how long a period of time did I come in every day?
 A As long as I can remember being there.
 Q Every day? Saturdays? Sundays?
 A Well, you might have missed one here and there. But --
 Q But usually on Saturdays and Sundays I was there?
 A Generally every day. I don't know if you missed a Saturday or a Sunday.
 I mean basically every day.
 Q But that would include Saturdays is the point I'm trying to get to?
 A It could. I had no recollection of what day was Saturday or Sunday in that time in my life.
 Q But you do remember that I was there every day. That you remember?
 A Basically every day, yes, Mr. Werner.
 (T.255) Q That includes Saturdays, doesn't it? A I guess it does.
 Q And what period of time are we talking about, Mr. Alesi?
 A Again, from all the time that I was there.
 Q Well, roughly March through November? Is that what you are saying to me? A I would imagine so.
 Q Well, you came to work in May, didn't you?
 A I believe it was May, I believe so. I don't know the months and the dates.
 Q So May through November I was there every day. Basically every day?
 A Basically. Q Basically every day. A Right.
 Q And was I there for hours at a time, or five minutes at a time, or all day long?
 A Well, normally it was every day about four, five o'clock; and sometimes you were there long, sometimes you were there for a half hour.
 Q All right. Now, do you know, Mr. Alesi, that during the summer months, July and August, that I had a place down the beach and I would be down there from Thursday night till Monday morning?
 (T.256) A No, I don't.
 Q You never knew that? A No, I didn't.
 Q You never called me down there, Mr. Alesi? A No, sir.
 Q Did you know that Mr. Bua called me down there?
 A I didn't know if he did or not; no
 Q Well, there came a time in August when you signed a note for \$7,000, didn't you? A Where I signed a note for \$7,000? Q That's right.
 A Regarding what?
 Q Well, the Continental, Hugo's Continental borrowed \$7,000 from a bank and you co-signed it; that is, you guaranteed payment on it. Do you recall that?
 A I imagine so, yes.
 Q You don't recall it, though?
 A I don't recall exactly what I signed.
 Q You don't recall that at all. But you recall everything about me?
 A No. I recall signing papers. I don't know exactly what I signed.
 Q But you do recall specifically everything about me?
 A I didn't say everything about you, Mr. Werner.
 Q Well, basically everything about me, Mr. Alesi?
 A Not basically everything about you. Only the instructions that you've given me.
 Q All right. Now let's get back to that November time, all right? Do you recall filling your car with liquor, bottles of liquor? A No, sir.
 Q You have no recollection of that? You heard Mr. Bua's testimony?
 A Regarding what?
 Q Regarding taking liquor out of the restaurant and putting it in your cars.
 A I didn't take liquor out of the restaurant and put it in my car.
 Q I'm asking you now did you hear Mr. Bua's testimony?
 A Did I hear his testimony? Most of it.
 Q Did you hear him say that?
 A No. He said that I put liquor in my car? Q Yes.

A I didn't hear him say that.

Q All right. You weren't aware of anybody else taking liquor and putting it in their car? A Not particularly, no. Q You don't.

(T.258) Now, wasn't it true that in that November meeting, Mr. Alesi, I came in with that audit from the accountants and I was very upset as to the amount of money that was owed by the corporation?

A I remember you saying that you were getting accountants to take an accounting of everything there, and then I remember you coming in with a report telling us that everything is bad and this has to be done in certain ways in order to make this business keep going and you'd better listen to me, otherwise we're closing the doors.

Q Mr. Alesi, as a matter of fact, didn't I come in with that report and say we weren't putting any more money into this establishment?

A Yes, I would imagine you said that. I remember you saying that a couple times, sure.

Q And I walked out? A I don't remember if you walked out or not.

Q All right. But you do remember my saying that we were not going to put another dime into this business?

A I remember you saying that many times, Mr. Werner.

Q On this specific occasion, Mr. Alesi? A Do I remember you saying that that specific occasion? Q Yes. A I couldn't say if you said it at that specific occasion. Possibly, yes. (T 259) Like I said, you've said it many times.

Q And then do you remember the situation that came about with the purchase of the accounts receivables, Mr. Alesi?

A What do you mean by the situation that came about? I remember about it, yes.

Q Do you remember that we purchased accounts receivables on that date - Mr. Kerin, Mr. Kaplan and I? A I believe so, yes.

Q All right. And do you remember a discussion about the taxes?

A No, sir. Q You have no recollection about taxes? A No, sir.

Q Not to go down to Internal Revenue and pay taxes, or anything like that? A No. Q All right. I refer you to Page 29 of your deposition, line 21. I'll start with line 15, Mr. Dinan. And this is an examination by me and my questioning of you at the time:

"Question: But you remember my instructing you Mr. Smith and telling Mr. Bua that the taxes had to be paid?"

"Question: But you remember my instructing Mr. Smith and telling Mr. Bua that the taxes had to be paid?"

"Answer: Well, you instructed everything had to be paid, you know.

"Question: But on this particular occasion we were talking about going down to the tax department, the liquor department --

"Answer: All I remember of that conversation was to go down to the tax department, not the reason why."

Q So, you recollect the discussion about taxes in your last testimony and you don't recall it now?

A I recall a lot of things you said. But you're pinning me down to a specific point which I may have remembered then, which I don't remember now.

Q Well, you say you don't remember now, but then -- you did remember?

A Then I did remember what? What you just read was what I just said. Q No, no. You just said here that you did not recall any discussions about taxes at that time. A At that particular moment. Q Right.

A Right. Q In this, you did remember discussion of unpaid taxes.

A Is that the same particular moment?

Q Well, let's go back and get down to the point in time.

Again referring to Page 29, on Line 4:

"Question: Let's go back to the November situation.

(T. 261) Do you remember a discussion where Mr. Bua said he had not paid his taxes and the Internal Revenue was after him?

"Answer: Specifically, no.

"Question: Do you remember any discussion about - as to taxes, Mr. Alesi, at that time?

"Answer: I remember the time that you had instructed Bob Smith to go with Mr. Bua down to the tax department." A OK.

MR. WERNER: All right.

THE COURT: DO Do you want to cross-examine, Mr. Neiman?

* * *

CROSS EXAMINATION BY MR. NEIMAN:

Q Now, Mr. Alesi, did your pay increase after you ceased being merely a musician and took on other duties? A No, sir.

Q You didn't get anything at all for it? A No.

Q Well, did you get meals for it, for example; something like that?

(T. 262) A Yes, I might have gotten meals, yes.

Q And did you get a place to sleep? A No.

Q All right. So that all that was added to your pay was just a meal, is that right? A I'm sorry. There was money deducted from my pay.

Q What for? A I was getting more as a musician than when I decided to try to work out some kind of deal to purchase 20 per cent. I was getting more as a musician.

Q Why was money deducted from your pay? What was it for?

A No, I just took less money because I was going to go for some sort of partnership.

Q. OK Now, did you ever have any real authority around that restaurant to determine, for example, what bills would be paid?

A. Never on what bills would be paid, no.

Q To look at the books of the restaurant? A No, sir.

Q To compute the taxes that might be due? A No, sir.

Q Were you ever consulted in any way about the taxes? A No, sir.

Q Anybody ever talk to you about taxes? (T. 263)

A Just heard the word mentioned a couple of times. But I never got into it.

Q. For about how many weeks did you act in the managerial capacity that you had, whatever it was?

A. Gee, I don't know. I don't really know how long it was. Well, I was entertaining still at night and I was working the bar during the day and doing little things, you know. Basically taking care of the lounge.

Q. All right. But now would it have been as long as six months?

A. I would imagine so, yes.

Q. So it might have started in July of that year, is that a fact? A. Right.

Q. And when did it end?

A. I think around November, December.

Q. Did Mr. Smith have any role in your participation in management ending? Mr. Robert Smith.

A. After. Not the same time. Bob Smith came later on.

Q. Yes. But I mean did you stop when he started?

A. Did I stop?

Q. Yes. Did you stop doing whatever management duties you had?

A. No. Not basically, no.

(T. 264) Q. You continued? A. Yes.

Q. So that he performed whatever services he performed in addition to yours, is that right? A. Right.

Q. And did you leave at the same time he left? A. Yes.

Q. When was that, that date?

A. I believe it was right after the New Year.

Q. All right. That is 1968?

A. If that's the year, that's it.

Q. All right. And you stayed past New Year's Day, did you not? A. Yes.

Q. What happened on New Year's Day?

A. What happened?

Q. Or New Year's Eve?

A. Well, we had a New Year's Eve; we were open.

Q. And was business good that night?

A. No. There was a terrible snowstorm that day.

Q. Was that the last straw? A. Yes.

Q. And that's when you left? A. Yes.

Q. And did you ever have anything to do with the place again after that?

A. No.

Q. Now, when did you first learn that the Internal Revenue Service intended to make an assessment against you?

A. Through a letter I received.

Q. And approximately when was that?

A. Five, six months later, I guess.

Q. So it's still 1968, right? And what did you do when you got the letter? A. Oh, boy.

Q. Now, I mean in general, Mr. Alesi. I mean did you react to it?

A. Oh yes, naturally. I was surprised, completely amazed. I thought I had, you know, nothing to do with anything that had anything to do with taxes. I believe I called someone in Connecticut regarding it and I think I made an appointment and went down and spoke to them about it.

THE COURT: You mean in the Revenue Bureau?

THE WITNESS: Yes.

Q. (By Mr. Neiman) Was that first assessment of taxes against you in the same amount as it is at present?

A. I don't believe so.

Q. Did you participate in some administrative proceedings?

(T.266) A. Right. I went and I made an appointment and I went to the Internal Revenue and spoke to them.

Q. Right. And as a result of this some part of the claim against you was dropped? A. Yes.

Q. Altogether, is that right?

MR. DINAN: Objection. That's contrary to the best evidence. The best evidence is Defendant's Exhibit 8.

MR. NEIMAN: Would counsel care to make a statement as to what it is?

THE COURT: All right.

MR. DINAN: There's only one assessment made against this man.

Q. (By Mr. Neiman) Was some portion of the assessment against you abated?

A. I really don't know. I imagine so.

Q. All right. And have you ever paid any portion of this tax?

A. Well, I found out that some was taken out of my insurance policy, cash surrender value.

Q. So there was an involuntary levy made, is that right?

A. Right. I believe so.

Q. You never consented to it, is that a fact? A. No.

(T.267) Q. Do you know approximately how much it was?

A. I think it's around seven hundred and some odd dollars. I may not be right.

Q. And is there any agreement or understanding with the Internal Revenue Service now, or with any branch of the government, relating to your payment of any more on this assessment? A. No agreement, no.

THE COURT: Is there a counterclaim here?

MR. NEIMAN: Yes, your Honor, there is. There is a counterclaim for the refund of the amount of money withheld.

THE COURT: That was taken by levy?

MR. NEIMAN: Yes, your Honor. The amount is stated in the pleadings.

MR. DINAN: Your Honor, that was the basis of my objection on the grounds that that's not the best evidence. We have the certificate of assessment and payment against this individual in evidence. This is hearsay.

MR. NEIMAN: I claim it, your Honor.

THE COURT: Well, it is in evidence in a better form, that's all.

MR. NEIMAN: All right.

Q. (By Mr. Neiman) Now, Mr. Alesi, are you here now asking for the refund of what you paid?

(T.268) A. Yes, I am, sir.

Q. And do you acknowledge any liability whatsoever to the Internal Revenue Service? A. No, sir.

MR. NEIMAN: No further questions.

THE COURT: That's it, is it?

MR. NEIMAN: That's all I have, your Honor.

MR. DINAN: Defendant rests, your Honor.

THE COURT: Everybody rests. You can step down, Mr. Alesi.

WITNESS: Thank you, your Honor.

(Witness excused.)

THE COURT: What do we do next?

MR. NEIMAN: If your Honor please, I think now we are at my part of the case. But Mr. Smith and Mr. Alesi have both testified. The only other evidence I would care to adduce would be the amount actually deducted from Mr. Bua's pay or otherwise recovered from him. There was vagueness on that point. The easiest way to clear it up would be for Mr. Dinan to tell us how much the IRS obtained from Mr. Bua. Otherwise, I would have to put his wife on.

(T.269) In the interest of saving time, perhaps you would care to make a statement on it.

MR. DINAN: I have no idea, your Honor.

THE COURT: But you have records you can provide?

MR. DINAN: I have no records here, your Honor.

THE COURT: I don't mean here. But you can ascertain what the exact amounts are?

MR. DINAN: Yes, your Honor. I can make a request of the Internal Revenue Service. I don't know where that is being paid.

THE COURT: I make a request that you obtain the information and make it available to the Court.

MR. DINAN: I shall.

THE COURT: What else is to be done to assist the Court?

MR. NEIMAN: I have nothing further.

MR. DINAN: If the Court would prefer briefs, I would be happy to submit a brief.

THE COURT: How long?

MR. DINAN: Your Honor, I would like the transcript in order to submit it.

THE COURT: What?

(T.270) MR. DINAN: Well, it's a factual question. The only brief I think that could be of assistance to the Court is the distinguishing of the various evidentiary facts that have been introduced.

THE COURT: Well, I don't know that we need anything on the facts, except as to there's assessments here now for periods in 1968.

MR. DINAN: Yes, your Honor.

THE COURT: And do you contend that Mr. Werner was still responsible for the conduct of this business after January of 1968?

MR. DINAN: Yes, your Honor, I contend that. But I understand the record might not substantiate my contention. But it is a question of credibility between Mr. Bua and Mr. Werner and Mr. Alesi and Mr. Smith.

THE COURT: Is there any evidence directly from any of these witnesses that Mr. Werner was active after January 1 of '68?

MR. DINAN: The only evidence that I tried to get in was the fact that he required Mr. Bua to sign a note for \$30,000 and paid \$200 a month on that, which would still tie him up with the financial aspects of that company.

THE COURT: That took place when?

(T.271) MR. WERNER: March of 1968, your Honor.

MR. DINAN: March of '68; which if Mr. Werner were still active during that first quarter in 1968 would constitute the bulk of the responsibility from January 1st, 1968 until the corporation closed. I have the figures here. They are in my pre-trial memorandum, your Honor, the breakdown as to the assessments.

THE COURT: Yes, I have seen the breakdown by quarters. Is there just one quarter in 1968?

MR. DINAN: Two quarters, your Honor. I believe the first one is one thousand some odd dollars and the second about \$600. Most of the money is in 1967; approximately \$9,000. This is off the top of my head, your Honor. I gave you my copy of the pre-trial order.

THE COURT: Yes.

MR. DINAN: If the Court prefers a legal brief, I can have a legal brief in within ten days, strictly on the law in this area.

THE COURT: I'll make you set forth your contentions, with very brief argument in support of them factually with respect to the periods after January 1 of 1968.

(T.272) MR. DINAN: Very well. Within ten days I'll have that to you, your Honor.

THE COURT: Then with respect to these contentions or with respect to your claim, the amount in each case.

MR. DINAN: Very well.

THE COURT: Then those figures on Mr. Alesi, upon whom a levy has been made. There is a counterclaim here.

MR. DINAN: I will request that information, your Honor, and I'll do the best I can. But if it is in a computer someplace in Martinsburg, West Virginia, I can assure you that I wouldn't receive that in time to submit my brief. But I will supplement it.

MR. NEIMAN: It's my information, your Honor, that the amount withheld from Mr. Alesi is agreed in the pleadings and not in dispute.

THE COURT: All right.

MR. WERNER: I think, your Honor, it was a question of the payments made by Mr. Bua to this tax assessment that we were discussing before, that you requested Mr. Dinan to get the figures out.

THE COURT: Yes. We are interested in only the current liability of Mr. Bua and Mr. Werner.

(T.273) MR. DINAN: I have the current liability of Mr. Frank Alesi as of January 31, 1974, and that does show a credit of \$601.61 against Mr. Alesi's liability of \$4,577.97.

THE COURT: Does it show as of when?

MR. DINAN: As of January 31, 1974; leaving a balance on Mr. Alesi--

THE COURT: Does it show as of when the payments were?

MR. DINAN: The payments were made on September 8, 1971. No payments have been made since that time. But that must have been the credit they are referring to.

MR. NEIMAN: I'm willing to stipulate, your Honor, that the amount involved in Mr. Alesi's cross-complaint, or counterclaim, is \$601.61.

THE COURT: As of when?

MR. NEIMAN: As of September 8, 1971.

MR. DINAN: As of now, it would have to be.

MR. NEIMAN: I mean our claim is for that sum of money, plus interest, from September 8, 1971, your Honor.

MR. DINAN: And that amount is set forth in Defendant and Third-Party Plaintiff's Exhibits 7, your Honor.

(T.274) MR. WERNER: But, if your Honor please, I do want to state that I think that we are looking for the information on how much Mr. Bua paid on these taxes. And Mr. Dinan said that he would attempt to get that. Is that correct?

MR. DINAN: Your Honor, Mr. Bua is not a party to this suit.

THE COURT: No. But are there credits? Do these assessments against Mr. Werner reflect all the credits?

MR. DINAN: No, they do not. From what Mr. Bua testified to this morning, I don't have his account sheet. I will request that account sheet.

THE COURT: Very well.

MR. DINAN: Adn I need not request Mr. Alesi's, since that is in evidence already.

THE COURT: Right.

MR. NEIMAN: I wonder, your Honor, if we might stipulate that that might come in as an exhibit whenever--

THE COURT: There is an exhibit here. This is Exhibit 7.

MR. DINAN: I believe he means Mr. Bua's liability, your Honor.

THE COURT: What are you talking about?

(T.275) MR. NEIMAN: I'm talking about the payments that Mr. Bua made, that when Mr. Dinan gets them that they be presented to the Court in the form of an exhibit and given a number and that we might all stipulate that they be received by the Court.

THE COURT: Well, I don't care about the form in which you do it. You will have the information, such as in the form in which he can make it available to us. And if you want to make an independent investigation or attempt to ascertain what it is from the Bureau or from any other records, you're welcome to do it and we will entertain any exhibits that you submit in the form of cancelled checks or other documentary form.

MR. NEIMAN: Yes. Your Honor, that's not the purpose. The purpose is we contend that any payments made by Mr. Bua should go toward the reduction of the entire assessment, however the Court may find. And Mr. Dinan has a difference of opinion on the law with respect to that. He feels he's not obligated to credit those payments, and I think he is.

MR. DINAN: Your Honor, that is a misstatement of fact. I will represent myself in this regard: (T.276) Counsel at one point said that as a matter of law this assessment made against more than one person cannot be collected from more than one person. And I stated as a matter of law that is incorrect. But the government has represented to the Circuit Courts of Appeal that as administrative procedure they never collect the amount of tax more than once. There is no law requiring that this be obeyed, but we, in fact, do so administratively.

THE COURT: All right. Ten days at the most. Anybody else who wants to submit contentions of fact may do so in the same period of time.

MR. DINAN: Thank you, your Honor.

THE COURT: Court is adjourned.

(Whereupon, court was adjourned.)

I hereby certify that the within and foregoing is a true and accurate transcript of my original stenographic notes taken to record all proceedings in the above-entitled cause, in the United States District Court, for the District of Connecticut, at Hartford, Connecticut, on March 6 and 7, 1974, before Hon. M. Joseph Blumenfeld, Chief Judge.

Paul A. Collard
Official Court Reporter

EXHIBITS

For the Plaintiff:

	Transcript Page Iden. Full	(App.pg.)
1 Letter dated 12/11/68 to Werner from Lepore		26 - (7)
2 Accounts receivable listing		46 - (12)
3 Proposed agreement		66 - (19)
4 Agreement dated July 10, 1967		89 - (25)
5 Agreement dated December 19, 1967		89 - (25)
6 Agreement dated December 19, 1967		90 - (26)

For the Defendant and Third-Party Plaintiff:

1 Two documents, bank account record of Smith	105	(30)
2 Copy of CBT bank statement 10/30/67 to 11/30/67	120	(34)
3 Group of checks dated November 20 and November 21 of 1967	121	(35)
4 Bank statement 12/5/67 to 12/29/67	146	(43)
5 Audit report of 10/31/67	158	(46)
6 Four notes	160	(46)

For the Plaintiff:

7 Agreement, purchase of Camelot	187 - (53)
8 Agreement dated March 15, 1968	238 - (69)

For the Defendant and Third-Party Plaintiff:

1 through 6	241 - (70)
7 Assessment sheets, Frank Alesi, Robert Smith	241 - (70)
8 Assessment sheet--Howard Werner	241 - (70)

THIS IS PART B OF THE APPENDIX TO BRIEF
HOWARD M. WERNER V UNITED STATES OF AMERICA.

PART A, CONTAINING THE PLEADINGS, THE
MEMORANDUM OF DECISION, ETC. IS CONTAINED IN
A SEPARATE VOLUME.





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